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Complaint in preparatory proceedings in the Polish criminal procedure

SUMMARY

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The subject of this thesis is a complaint in preparatory proceedings. Due to the necessity of adequate application of some legal provisions, their placement in different sections and chapters of the Code as well as specific statutes, there are many interpretation doubts. Whereas a complaint plays an important role in the preliminary stage of criminal procedure, i.e. invoking a court's control in order to protect constitutional rights and civil liberties, this issue deserves a deeper analysis.

A research method applied in this paper is a dogmatic-legal method. Theses and views outlined in the paper have been presented on the basis of the legal provisions in force, views of the criminal procedure doctrine experts and judicial decisions of the Supreme Court, Constitutional Tribunal and common courts. In the case of some of the discussed institutions, their brief history has been presented. Many a time, the repealed legal acts as well as views of doctrine experts expressed a long time ago have been used and assessed in terms of their validity. Hence, many of the theses presented when the Code of Criminal Procedure of 1928 and of 1969 were in force still remain valid even today.

However, there have been no deliberations of legal and comparative nature in the paper, and the primary focus was the analysis of Polish criminal procedure. The main aim was to present the Polish model of preparatory proceedings control. The complaint, as an appeal measure, is known in numerous criminal procedures, such as the German one (*Beschwerde*), Slovak (*sťažnosť*), Czech (*stížnost*) or Russian (*жалоба*). If the deliberations of legal and comparative nature were to be presented in detail, taking into account the individual nature of legal systems, and particularly differences in the course, authorities and decision taking manners in the early stage of criminal procedure, it would require a separate analysis.

In Chapter I there are general remarks on pillars of the binding preparatory proceedings control deriving from constitutional and international norms. Deliberations presented therein concern the principle of appeal of the first instance court decisions, the principle of two instances in the court proceedings, as well as the right to court's control over depriving of liberty. General rules of criminal procedure, including the principle of control, have also been brought to the reader's attention. Due to the fact that prosecutor's supervision exists along with court's control of appeal procedure, in order not to interpret the two concepts as equivalent, differences between the two have been presented. A historic way to the contemporary model of appeal procedure in the preparatory proceedings has been shown; moreover, specific features of this model have been determined, which was a starting point to further discussion, especially: locating the legal provisions on appeal procedures in the code

systematics, dualism of authorities examining complaints as well as multitude of entities authorized to file a complaint.

This last aspect is dealt with in Chapter II of the thesis. Due to dynamics of the preparatory proceedings and multitude of activities taken in the course thereof, many persons may find themselves affected by activities of the extrajudicial bodies. First and foremost, these will be the parties, i.e. the aggrieved and the suspect, but not only. Some of the evidentiary or procedural activities may also refer to third parties who, according to the law in force, are entitled to appeal both against procedural decisions and factual (real) acts. This results in the multiplicity of entities with the right to file a complaint in the course of preparatory proceedings. The legislator, however, does not always apply precise criteria allowing to determine a title to bring the action before a court, which leads to interpretation doubts, referred to in particular subsections. Separate comments have been made in reference to a prosecutor who has a twofold role: on the one hand a prosecutor is a host of this stage of criminal procedure, on the other hand, however, having the rights of a party, is entitled to file a complaint. A separate subject of discussion was the issue of basic guarantees of the title to file a complaint which was deemed to be in the instruction on the right to file a complaint and access to case files. It was not the institutions as such that were discussed but the occurring problems that might lead to restricting the right to file a complaint that were the main focus.

Chapter III of the thesis concerns bodies authorised to examine complaints in the course of preparatory proceedings. Most of the remarks concern the court, since this very body supervises the preliminary criminal procedure. What was emphasised in particular subsections were doubts that emerge or may emerge with regard to diverse terminology applied by a legislator for determination of local and material jurisdiction of a body appointed to examine a complaint. The institution of “horizontal instance” was discussed separately. Due to the fact that the prosecutor’s power to examine complaints were retained, although to a little extent, this body was also discussed separately. Along with the constitutional issues, the thesis also focused on the superior prosecutor’s powers to examine complaints against orders concerning detention on remand. They are covered in a separate statute, i.e. the Executive Criminal Code, however, they are an important part of pending preparatory proceedings and allow for an option of filing a complaint, other than the control of applying preventive measures by the court.

Chapter IV of the thesis is devoted to the complaint in question. The following issues have been dealt with in this part: complaints against decisions and orders preventing from issuing a judgement, complaints against trial decisions referred to in the Code of Criminal

Procedure, as well as complaints against decisions and orders closing proceedings, complaints against decisions concerning preventive measures as well as complaints against trial decisions specified in the Code of Criminal Procedure but referring to preparatory proceedings. In this chapter there are also general issues – a subject of discourse of criminal procedure doctrine experts – on no subject of appeal and possibility to appeal against first instance activity or performed for the first time. Individual subsections have been devoted to an analysis of the issue of possibility to appeal against factual (real) activities, as well as a complaint against passivity of the authority. The thesis is closed with deliberations *de lege ferenda* the subject of which is: refusal or restriction of contact of a defence lawyer with a suspect in a detention on remand, refusal of granting a right to an interpreter assistance, decision to present charges, decision to take up again or resume preparatory proceedings, refusal to issue a European Investigation Order, exhumation and non-admission of a party or its trial agent to activities in the course of preparatory proceedings.

Chapter V of the thesis deals with formal conditions of a complaint as an appeal measure and effects of filing thereof. Subsequent subsections concern a time framework of filing a complaint especially when its period begins in case of appealing against activities other than decisions and orders or in the case of institution passivity. The topics of charges, form (including electronic one), justification of the appeal measure, response to the complaint or access to appeal proceedings case files are also discussed. A separate subsection is devoted to the effects of filing a complaint, especially all consequences regarding the enforceability of the appealed procedural decision and limitations of powers of bodies conducting preparatory proceedings.

The last thesis chapter is devoted to issues concerning an appeal procedure before the appeal body. In particular subsections, the issues of time framework of examining a complaint, evidentiary proceedings, as well as concurrence of complaints and form and type of decisions taken by the appeal bodies after examining a complaint. A separate subsection is devoted to bringing a complaint to a higher instance and activities taken by a body *a quo* after it has received an appeal measure.

In the resume there are also remarks on modification of appeal proceedings in the course of preparatory proceedings referred to above and a critical assessment of some procedural solutions with own proposals of changes.

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