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Application of Expedited Procedure in Context of Ensuring Principle of Inevitability of Punishment

Dainis Vēbers
ORCID: 0000-0001-9006-0522
Rīga Stradiņš University, Latvia
012947@rsu.edu.lv

Abstract

The aim of the study is to analyse Latvia's simplified forms of criminal proceedings, particularly the expedited procedure, possibilities for improving its application when evaluating ensuring the principle of inevitability of punishment.

It has been concluded in the study that the Criminal Procedure Law provides for sufficiently effective simplified forms of criminal proceedings which allow for the rapid achievement of a fair settlement of criminal legal relations. Simultaneously, practical application of these simplified forms of criminal proceedings should be improved. It is particularly important to promote interinstitutional cooperation by ensuring common understanding of the investigator and the prosecutor, their willingness to work together. The Prosecution Office should take the initiative by creating standards for the application of simplified forms of criminal proceedings, i.e. at the stage of investigation and in their further direction.

Effective application of the expedited procedure and other simplified forms of criminal proceedings serves to ensure the principle of inevitability of punishment, as well as to facilitate the exercise of the right to criminal proceedings within a reasonable time.

The study looks at Latvia's regulatory enactments and their application practices, legal literature, statistics of criminal proceedings. The study uses comparative, descriptive, deductive-inductive methods as well as methods for interpreting legislation.

Keywords: criminal proceedings, expedited procedure, principle of inevitability of punishment, simplification of criminal proceedings.

Introduction

The United Nations as one of its sustainable development goals has put forward promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable, and inclusive institutions at

all levels. This goal aims, *inter alia*, at improving the effectiveness of combatting crime, reducing violent crime, and increasing efficiency of institutions in the relevant field (Transforming our world: the 2030 Agenda for Sustainable Development, 2015). As it has been concluded by the United Nations, the predominant response to crime in countries is the criminal justice system, although the criminal justice system deals with offences after they have occurred and its role in preventing crime is less clear (World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, 2017). Accordingly, in parallel with other crime prevention possibilities, such as arrangement of the urban environment, improving the economic situation, promoting educational opportunities, etc., it is necessary to further analyse possibilities of the criminal justice system in prevention of crime. In this context, effective ensuring of the principle of inevitability of punishment should be emphasised, in particular when evaluating aspects related to the immediate infliction of punishment. As it was indicated by the Italian criminologist Cesare Beccaria, certainty of a small punishment will make a stronger impression than fear of a more severe one if attended with hopes of escaping. The more immediately, after the commission of a crime a punishment is inflicted, the more just and useful it will be. The smaller the interval of time between the punishment and the crime, the stronger and more lasting the association of the two ideas of Crime and Punishment will be: so that they may be considered, one as the cause, and the other as the unavoidable and necessary effect (Beccaria, 1764). Consequently, national criminal justice system should be such as to ensure timely and proportionate infliction of punishment ensuring that the principle of inevitability of punishment is applied and serves to prevent crimes both regarding future crimes committed by a particular person or in the long term in society as a whole.

The purpose of the study is to analyse Latvia's simplified forms of criminal proceedings, particularly the expedited procedure, possibilities for improving its application when evaluating ensuring the principle of inevitability of punishment of persons.

The study looks at Latvia's regulatory enactments and their application practices, legal literature, statistics of criminal proceedings. The study uses comparative, descriptive, deductive-inductive methods as well as methods for interpreting legislation.

Criterion of Inevitability of Punishment – Timeliness of Infliction of Punishment

In accordance with Section 35 of the Criminal Law the purpose of criminal punishment, *inter alia*, is to achieve that the punished person and other persons observe law and refrain from committing criminal offences (Criminal Law, 1998). Criminal punishment provides assurance that infliction of punishment will deter the person concerned from relapse or serve as a preventive mechanism for other persons.

At the same time, not severity but inevitability of punishment is the main reason for not committing new crime, which also includes the speed of infliction of punishment. The punishment for a committed crime must be inflicted immediately so that the person is

aware what exactly he or she is punished for and for this to have an impact on the person's future decisions. It is the awareness that a crime will be followed by an immediate and appropriate punishment that prevents the person from committing a new crime.

Punishment also aims to protect public safety. Society knows that certain acts are subject to criminal liability while simultaneously expecting that the perpetrators will be found in a timely manner and held liable by law. By being capable of ensuring the rule of law, the state also enforces the general prevention and promotes public confidence in the state. According to the Chief Justice of the Supreme Court Aigars Strupišs, society loses faith in the law and the state if the principle of inevitability of punishment does not work. Society needs to see that the law works. So that no one escapes punishment (Strupišs, 2020).

Inevitability of punishment is closely linked to the speed of infliction of punishment or to the achievement of another form of fair settlement of criminal legal relations. In addition, achieving a timely fair settlement of criminal legal relations is an element of the right to justice guaranteed by Article 6 of the European Convention on Human Rights, which Latvia has to enforce in practice (European Convention on Human Rights, 1950). One of the basic principles of criminal proceedings is the right to completion of criminal proceedings within a reasonable time, i.e. without undue delay (Criminal Procedure Law, 2005). This right applies to both the person entitled to defence and the victim (Baumanis, 2018). Regarding the perpetrator, criminal proceedings should be as short as possible, since the person must receive appropriate punishment for the committed crime in accordance with the procedures specified in the law rather than be punished with lengthy criminal proceedings and coercive restrictions during that time. On the other hand, the victim should be able to achieve a fair settlement of criminal legal relations as soon as possible to restore the initial situation that existed before the crime or to receive adequate compensation (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). It is essential that the victim be subjected as little as possible to long-term criminal proceedings which, in interaction with act or omission of other institutions involved in criminal proceedings (investigating authorities, prosecution office, court), increase risks of secondary victimisation (Handbook on justice for victims, 1999, 9).

Ensuring Inevitability of Punishment – Ability of Institutions to Ensure Fair Settlement of Criminal Legal Relations (Improvement of the Criminal Procedure Law)

Ensuring the principle of inevitability of punishment depends on the capacity of investigating authorities, the prosecution office, and the court, or on the ability to bring criminal proceedings to a fair settlement of criminal legal relations. The capacity in this case should be viewed broadly to include institutional resources, staff qualifications, work organisation, interinstitutional cooperation. Similarly, the ability of institutions to achieve a fair settlement of criminal legal relations is also clearly linked to criminal procedural

matters, simplification or complexity of investigation, enforcement of charges, the trial, how easy it is to record procedural activities, and prepare procedural decisions.

As regards the latter, it should be noted that the Criminal Procedure Law is being improved from time to time with a view to simplifying the implementation of criminal proceedings. The Criminal Procedure Law includes a number of mechanisms that make conduct of criminal proceedings more effective, including preconditions for faster record management in criminal proceedings. Examples include a prosecutor's penal order or an agreement on guilt recognition and punishment. Application of the expedited procedure also has a certain role to play in the implementation of the principle of inevitability of punishment and in ensuring the right to case examination within a reasonable time. The Criminal Procedure Law requires the person directing the proceedings to achieve a fair settlement of criminal legal relations in such criminal matters within relatively short time limits, even giving them priority (Comments to the Criminal Procedure Law, 2019).

On 20 June 2018, the Law "Amendments to the Criminal Procedure Law", which entered into force on 1 September 2018, was adopted for the purposes of implementing simplification of criminal investigation, prescribing an investigation proportionate to the severity of the crime, and strengthening the role of the principle of procedural economy in criminal proceedings. These legislative changes also simplify the recording of procedural activities, as well as review the application of simplified processes, including the expedited procedure. It is also the responsibility of the person directing the proceedings to choose the simplest form of criminal proceedings, as well as to select and take procedural actions to ensure that the purpose of criminal proceedings is achieved as quickly and economically as possible. Consequently, it should be mandatory for the person directing the proceedings to choose simplified forms of criminal proceedings under certain conditions (Vēbers, 2018).

During the investigation phase, the expedited procedure as the most important form of simplified criminal proceedings was to be mainly marked, within which the investigation should be completed and the case should be referred by the prosecutor not later than within 10 days or, in cases where an expert examination is to be carried out, no later than within 30 days from the time of initiation of the criminal proceedings. The fact that this is an important simplified form of criminal proceedings is also evidenced by criminal proceedings statistics on cases referred by the investigating authorities to the prosecution office for criminal prosecution. In 2019 and 2020, the investigating authorities referred more than 40% of all criminal proceedings initiated that year for criminal prosecution in accordance with the expedited procedure. In some State Police departments, this ratio has exceeded 60% (Information Centre of the Ministry of the Interior, 2021). This proportion is an indication of the possibility of further improvement of the expedited procedure, which could clearly become the most common type of procedure at the investigation phase.

On the other hand, in the criminal prosecution phase, the prosecutor should initially consider, for example, the possibility of using a prosecutor's penal order or termination of criminal proceedings with conditions, as these would be simpler forms of

proceedings (no court involved). However, if the prosecutor believes that the simplest form of completion of pre-trial criminal proceedings appropriate for specific circumstances is the continuation of proceedings under an expedited procedure, the prosecutor shall take a decision to refer the case to a court immediately, but not later than within 10 days. The statistics also show that, after the changes to the Criminal Procedure Law, which determined the obligation of the person directing the proceedings to choose the simplest type of proceedings, the prosecution office is completing increasingly more criminal proceedings at the level of the prosecution office having applied a prosecutor's penal order 1674 times in 2019 and 1972 times in 2020. In turn, the number of cases referred under the expedited procedure decreases significantly – 1345 in 2019, 932 in 2020 (Prosecution Office of the Republic of Latvia, 2021).

Although, for example, Professor Kristīne Strada-Rozenberga points out that the newly introduced expedited procedure is generally a mixed pattern of the forms of simplified criminal proceedings that existed in the past (short procedure in pre-trial proceedings + urgency procedure in court) with very minor modifications and very minimal innovation (Strada-Rozenberga, 2018), it should be noted that all the changes to the Criminal Procedure Law should be viewed in general. They should not be isolated from the scope of the expedited procedure, and the implemented changes to criminal proceedings generally contribute to the possibilities for applying the expedited procedure. Moreover, the proposed changes do not mean the expedited procedure as an end in itself, but rather a fair settlement of criminal legal relations in a timely manner by obliging the person directing the proceedings to choose the simplest form of proceedings, which in the prosecution phase is no longer an expedited procedure but the forms of criminal proceedings to be completed in the prosecutor's office phase (annotation of Amendments to Criminal Procedure Law, 2018). This understanding is also demonstrated by the statistics of prosecution office provided above.

It is necessary to complete investigation and criminal prosecution within a limited period of time in order to direct criminal proceedings under an expedited procedure. Consequently, it is important that the person who has committed a crime does not avoid fulfilment of his or her procedural duties, or it should be possible to ensure that the person is available. With changes to the Criminal Procedure Law, which take effect on 1 September 2018, the legislator also identified the possibility for the detained person, if they are recognised as a suspect or an accused, in order to ensure their delivery to a prosecutor or to a court for completion of criminal proceedings, the person may be in temporary detention, subject to the specified 48-hour limit from the time of actual detention (Amendments to the Criminal Procedure Law, 2018). Such a mechanism was intended to mainly work when criminal proceedings are referred to police and the suspect is referred to the prosecution office, for example, for the application of a prosecutor's penal order, and, when implementing effective cooperation between the police, prosecution office and court, the referral of criminal proceedings and the person to a court would also be possible (annotation of Amendments to Criminal Procedure Law,

2018). Therefore, there is a tool which allows for the application of coercive measures for delivery of a person to the prosecutor and court under the expedited procedure under known conditions at the beginning, thereby ensuring a fair settlement of criminal legal relations without possible delay. Of course, such a limitation of rights must be proportionate.

Ensuring Inevitability of Punishment – Ability of Institutions to Ensure Fair Settlement of Criminal Legal Relations (Improvement of Interinstitutional Cooperation)

In continuing evaluation of the capacity of the institutions, it should be noted that it means not only resources of the investigating authorities, the prosecution office and the court, but also personnel qualifications and work organisation, including the ability of these authorities to cooperate with each other. Where the number of personnel and to a certain extent qualification depend on the funding provided by the state and the qualification requirements set, then the work organisation and, in particular, cooperation shall be the direct competence of the institutions. The Criminal Procedure Law provides for such cooperation opportunities and must be implemented if the aim is to achieve a rapid fair settlement of criminal legal relations, thus also ensuring that the principle of inevitability of punishment is respected. Moreover, it is the implementation of mutual cooperation that should be a priority at the moment.

The State Audit Office also points to the need for cooperation and common understanding. As regards the question of how to reduce the overall workload of the criminal justice system, the State Audit Office indicates that it would be necessary to introduce a common understanding and practice that, in the initial phase of investigation, the investigator, together with the supervising prosecutor, shall agree on directions of investigation and reasonable limits for bringing persons to criminal liability. The State Audit Office also points out that it is essential to introduce more effectively in practice solutions already provided for in the Criminal Procedure Law for simplification, faster and more economical conduct of criminal proceedings. To this end, the Prosecution Office should first define a common understanding and the applicable practice regarding the implementation of uniform procedures (State Audit Office, 2021).

When agreeing with the findings of State Audit Office, it should be pointed out that it is not only the responsibility of each country to improve the regulatory framework but also to provide such an organisation of investigative, prosecution authorities and courts in order to create preconditions for ensuring the principle of inevitability of punishment. Quick handling of relatively simple cases and immediate calling of a person to criminal liability both reduce the sense of impunity in a particular person who committed a crime and contribute to prevention in society as a whole, and allow the resources of the investigating authorities and the prosecution office to be diverted to pre-trial investigations of more complex cases, thereby indirectly contributing to the implementation

of the principle of inevitability of punishment also in such cases. A similar conclusion has been reached by Professor Sandra Kaija, saying that application of the law in practice is also an important criterion, particularly whether the enforcement of the law has been effective in preventing individuals from committing crimes, and in case of a crime that has already happened, by applying the norms of the Criminal Law achieving a fair settlement of criminal legal relations without unjustified interference in the life of a person (Kaija, 2017).

In the light of the above, the person directing the proceedings should also choose in practice the simplest form of criminal proceedings, while avoiding unjustified interference in the life of a person and unjustified costs. The person directing the proceedings must not only carry out an effective investigation but also be able to cooperate with the person directing the next phase of criminal proceedings, the investigator should cooperate with the prosecutor, the prosecutor should cooperate with the judge to arrive at the possibility of completing criminal proceedings within very limited time frames. Effective cooperation is particularly important in cases where the investigator chooses to bring the person to the prosecutor and possibly further to the court while the person is detained. Simultaneously, given the role of the prosecutor in criminal proceedings, the initiative of the prosecution office is important by developing uniform guidelines, establishing a common understanding of the application of legal provisions, and actively engaging in criminal proceedings in their initial phase.

It is as a result of effective interinstitutional cooperation in countries such as Estonia, the Czech Republic, the Netherlands that can bring a person, while being detained, to the competent person directing the proceedings for the application of criminal penalty. In Estonia, Lithuania and the Czech Republic, a person is taken to the court, in the Netherlands to the prosecution office for the application of the prosecutor's penal order within 48 or 72 hours. Consequently, there are examples of legal provisions and effective cooperation which ensure that criminal punishment is inflicted within a few hours or within a few days at the latest. (Vēbers, Stulpāns, 2015).

As already mentioned, changes have also been made to the Criminal Procedure Law in Latvia, which allows the suspected person to be detained for up to 48 hours in order to be delivered to the prosecutor for completion of criminal proceedings. At the same time, the number of cases of practical application of this provision is still not considered numerous. It is reasonable to state that the application of detention for the expedited completion of criminal proceedings should not be an end in itself, while if the person who committed a crime has been detained in accordance with the conditions laid down in Section 264 of the Criminal Procedure Law (Criminal Procedure Law, 2005), such an option should be used for the timely fair settlement of criminal legal relations.

In order to improve the application of this provision in practice, the prosecutor supervising criminal proceedings must be appointed without delay. There must not be a situation where the time period of 24 hours specified in Section 372 of the Criminal Procedure Law for notification of the commencement of criminal proceedings and

the period of 24 hours for appointment of a supervising prosecutor after receipt of such information (Criminal Procedure Law, 2005) are used to the maximum extent. The investigator must have clear guidelines laid down by the prosecution office in which situations it is appropriate to try to complete criminal proceedings within 48 hours. In addition to a sufficient amount of evidence, there must be assurance that one of the simplified forms of completion of the proceedings at the level of the prosecution office (prosecutor's penal order, termination of criminal proceedings under conditions) can be applied to the person or that the case should be referred to a court. In particular, the investigator should detect whether the person would agree to the application of a simplified form of criminal proceedings. Is it self-evident that the person who has committed a crime should have the right to a fair trial, including the right to defence and the right to use the language that this person knows. The investigating authority, the prosecution office and the court must be able to ensure that these rights are exercised within a limited time span, or if it is unable to do so, the possibility of completing criminal proceedings within 48 hours should be dismissed while continuing to proceed as far as possible with the expedited procedure.

Consequently, the emphasis should now be placed directly on the development of law enforcement practices resolving capacity issues such as personnel qualifications, work organisation at the institution and interinstitutional cooperation. Common understanding and effective cooperation between the investigator and the supervising prosecutor would play a particularly important role here, which would be promoted by the guidelines developed under the leadership of the prosecution office.

As it can be seen from the above statistics, it is possible to achieve the use of expedited procedure at the stage of investigation in the criminal proceedings initiated in the respective year and referred to criminal prosecution in more than 60 % of cases. Nevertheless, the prosecutor has been given a very extensive palette of simplified forms of criminal proceedings, which makes it possible to achieve a rapid fair settlement of criminal legal relations.

Conclusions

The Criminal Procedure Law provides for sufficiently effective simplified forms of criminal proceedings, including the expedited procedure, which allows for the rapid achievement of a fair settlement of criminal legal relations. At the same time, it has been concluded that practical application of these simplified forms of criminal proceedings is different, mainly influenced by the capacity of the institutions – personnel resources, their qualifications and interinstitutional cooperation.

Currently, it is particularly important to promote interinstitutional cooperation by ensuring a common understanding of the investigator and the prosecutor, their willingness to work together to enable a rapid fair settlement of criminal legal relations. The Prosecution Office should take the initiative by creating standards for the application

of simplified forms of criminal proceedings, i.e. at the stage of investigation and in their further direction.

Effective application of the expedited procedure and other simplified forms of criminal proceedings serves to ensure the principle of inevitability of punishment, as well as to facilitate the exercise of the right to criminal proceedings within a reasonable time, both in specific criminal proceedings and in general, as it ensures savings of the resources of investigative authorities, the prosecution office, when investigating simpler crimes, thereby enabling more effective investigation of other more complex crimes, thereby indirectly contributing to the implementation of the principle of inevitability of punishment also in these complex cases.

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