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Efficiency of criminal proceedings and their cost¹

Abstract: To sum up, it should be stated that the concept of efficiency should be understood as a quick, effective and rational operation of the participants in the proceedings, taking into account the principles of efficiency and savings of financial resources.² The length of proceedings is one of the most acute problems not only of criminal law, but also of the administration of justice in general. The first and foremost reason for such a classification is that the excessive length of proceedings prevents a fair hearing, since it does not respect the constitutional right to have a case heard without undue delay. Secondly, long proceedings generate high costs, an issue particularly important when these costs are borne by the State Treasury and thus not by the convict whose culpable behavior has caused them to arise.

The issues of efficiency of criminal proceedings and their costs are inextricably linked. Furthermore, it establishes that the efficiency of criminal proceedings determines the level of generated costs. The research shows that the quality of the proceeded cases depends on the financial outlays and that the costs indicated by the procedural authorities do not correspond with those actually incurred.

In conclusion, it should be pointed out that financial aspects fall within the scope of the regulatory impact assessment and constitute a priority when im-

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2 Agnieszka Orfin, *Sprawność postępowania karnego a jego koszty*. Warszawa, 2020, 25–39.

plementing new legal provisions, in direct relation to the economic analysis of law and the efficiency and costs of ongoing proceedings.

Keywords: criminal trial, efficiency, costs, relations.

Introduction

In the words of the four-time Prime Minister of Great Britain (1868–1894), William Gladstone: “Justice delayed is justice denied.” A lengthy procedure not only prevents the administration of justice, but above all, generates very high costs. The problem of costs appears to be particularly important when they are borne by the State Treasury, which means that it is society, not the convicted person, who has to bear them.³ The problem of lengthy criminal proceedings and their high costs is interesting enough for it to have become the reason for conducting scientific research on a national scale, UMO-2015/17/N/HS5/00438, Competition: Preludium 9; A. Orfin position: project manager, scientific supervisor: prof. dr hab. Paweł Wiliński; (the results of the grant have been published).⁴ Its aim was to answer the question of whether there is any relationship between the efficiency of criminal proceedings and their costs, and if yes, then what its nature is. It is also important to find out the time during which cases are considered before the court of first instance, what this depends on, what the final costs of criminal trials are, and what determines them.⁵ The aim of this paper is to answer the question of whether the efficiency of criminal proceedings determines the amount of costs incurred; to investigate

3 Monika Klejnowska, Piotr Hofmański et. al., *System prawa karnego procesowego. Tom XVIII. Koszty procesu w sprawach karnych*. Warszawa, 2018, 53–624; Paweł Wiliński, “Criminal procedure” in *Foundations of Law. The Polish Perspective*, eds. W. Dajczak, T. Nieborak, and P. Wiliński. Warszawa, 2021, 417–468; Paweł Wiliński, “Koszty procesu” in *Polski proces karny*, ed. P. Wiliński. Warszawa, 2020, 775–784.

4 Orfin, *Sprawność*.

5 Agnieszka Orfin, “Czy polski proces karny jest kosztowny? Kilka uwag o sprawności postępowania karnego i jego kosztach” in *Proces karny w dobie przemian. Przebieg postępowania*, eds. S. Steinborn, and K. Woźniewski. Gdańsk, 2018, 539–548; Agnieszka Orfin, “Should Money Be the Issue in Criminal Proceedings? Some Remarks from the Perspective of Law and Economics”, *Polish Yearbook of Law & Economics* 6. 2015: 131–151.

what the efficiency depends on, and what relations exist between the efficiency of the procedure and its costs. It is worth determining when a criminal procedure lasts too long, what determines the effectiveness of the examination of cases, and what the interdependencies are between the efficiency and costs of criminal proceedings. Furthermore, it is important to establish what criteria can be used to judge the rationality of the action of judicial bodies and what the maximum cost of a particular case is. It also needs to be established whether, as some authors argue, criminal proceedings are actually too costly and inefficient.⁶

In order to address the above-mentioned issues, two types of research were conducted: quantitative and qualitative (triangulation of research methods). An examination of court files, a case study and a quasi-Delphi survey were carried out (qualitative and quantitative research):⁷

- The case study took place between January 2015 and August 2015, in the criminal departments of eight district courts located in Poland. It was important for the author of the research to obtain information from the administrative staff of the secretariats of the Criminal Divisions, as well as Financial, Economic and Human Resources Departments, concerning the impact of cases per year, the number of completed and unfinished cases, the number and procedures for examining criminal cases in 2012–2015, employment in a given court in 2012–2015, with a specific focus on criminal departments and the costs of court functioning (types and amounts).
- In the documentary examination of court files, about 800 criminal cases were analyzed (in each court ca. 100 cases), in the same courts as in the

6 Stanisław Momot, and Andrzej Ważny, “Postępowanie przyspieszone w praktyce”, *Prokuratura i Prawo*, no. 11–12. 2009: 122; Robert Cooter, and Thomas Ulen, *Ekonomiczna analiza prawa*. Warszawa, 2011, 508.

7 Chava Frankfort-Nachmias, and David Nachmias, *Metody badawcze w naukach społecznych*. Poznań, 2011, 65; Jerzy Apanowicz, *Metodologiczne uwarunkowania pracy naukowej. Prace doktorskie. Prace habilitacyjne*. Warszawa, 2005, 70; Hubert Witczak, “Problemy naukowe” in *Podstawy metodologiczne prac doktorskich w naukach ekonomicznych*, eds. M. Sławińska, and H. Witczak. Second updated edition. Poznań, 2012, 72.

case study, i.e. in the District Court for the Capital City of Warsaw in Warsaw, 3rd Criminal Division, DC Poznań-Stare Miasto in Poznań, 3rd Criminal Division, DC for Wrocław-Fabryczna in Wrocław, II Criminal Division, DC Szczecin-Centrum in Szczecin, IV Criminal Division, DC in Giżycko, II Criminal Division, DC in Krosno, II Criminal Division, DC in Wałcz, II Criminal Division.

- The survey was conducted in 2016 and 2018, using the so-called quasi-Delphi method (one round) and face-to-face interviews with judges and administrative staff from secretariats in criminal divisions, as well as court directors in the courts under analysis. The survey was carried out among experts in law and economics who were invited to the survey. Among them were the administrative staff of courts and court presidents, judges, directors and employees (heads) of criminal divisions, and administrative, accounting and financial departments in district courts in Poland where the research was conducted; employees of the Ministry of Justice and the Institute of Justice (IWS), legislators and persons responsible for regulatory impact assessment (RIA), prosecutors, academics and scholars in the field of law or economics, lawyers, managers or employees of legal associations and foundations (including the Polish Association for Economic Analysis of Law, Helsinki Foundation for Human Rights).

Selected research results will be presented below.

The Concept of Efficiency and Costs of the Criminal Trial

The concept of efficiency is an interdisciplinary concept, primarily used in the fields of law and economics, and should be explained in relation to ideas such as speed, effectiveness, rationality, and productivity. Court proceedings should be conducted without unnecessary breaks or inhibitions. Appropriate speed is understood as the lack (or prevention) of unjustified delays, rather than as hurry

and haste to present a ruling. For the judiciary, the term pertains to the time within which cases are heard, rulings are issued, and actions are undertaken by participants to the proceedings.⁸ Another concept that characterizes the efficiency of the proceedings is effectiveness. In order for court proceedings to be called efficient, the intended, planned purpose must be achieved. The scope of the concept includes the effectiveness of action, because an efficient action allows one to get closer to the intended goals.⁹ Therefore, in order for the court proceedings to be called efficient, it is first of all necessary to achieve the intended purpose, or effect. In the field of law, the adjectives efficient and effective are often used interchangeably to describe the proceedings. In economic sciences, in the most general terms, efficiency is perceived as an effect in relation to the effort, while the effect must be measurable. Such an effect does not occur in court proceedings. C. Kulesza maintains that the striving for lower functional costs (cost efficiency) should be related to the appeal for speedier proceedings and might be a sign – or even a synonym – of proceedings efficiency. The general principle of efficiency states that an action is more efficient if it has more impact with concrete investments. The principle of maximum savings proposes that an action brings more benefits if it requires less investment for a particular impact to be achieved. Another equally important matter is the estimation of financial resources that are allocated to the Polish legal system, and the question of how these resources are utilized there. Rationality is also an important concept related to efficiency: to be called smooth, a criminal trial requires rational, thoughtful, planned, logical and concentrated activities of all its participants in a compact temporal framework. Each decision of a participant in court proceedings should be rational. In the light of the above, it should be stated that it is not possible to

8 Stanisław Pikulski, and Jarosław Szczechowicz, “Ludzki wymiar prawa a przewlekłość postępowania sądowego” in *Księga jubileuszowa Profesora Tadeusza Jasudowicza*, eds. J. Białocerkiewicz, M. Balcerzak, and A. Czaczek-Durlak. Toruń, 2004, 354.

9 Cezary Kulesza, *Efektywność udziału obrońcy w procesie karnym w perspektywie prawno-porównawczej*. Warszawa, 2005, 30.

hear a court case efficiently without rational planning of its course, with particular emphasis on the behavior of its participants.

In economics, speed may be a feature of a phenomenon that occurs at greater speed, more frequently, or faster than usual. It is a value that describes how fast someone moves or something happens. The notion may be used to describe the time required for an enterprise to achieve profit, or the speed of occurring changes. In the economic sciences, effectiveness is sometimes understood as a measure of achieving goals.¹⁰ On the other hand, efficiency is the result of economic activity, determined by the ratio of the obtained effect to the expenditure.¹¹ Efficiency is a measure for the work conducted and an indicator of the profits gained; sometimes it equated with thriftiness and rational choices. Economists often identify the category of efficiency with the law of rational management. The latter is one of the key notions in economics: according to it, the subject makes such an allocation of their limited resources that optimizes the benefits it derives from them.

To sum up, it should be stated that the concept of efficiency should be understood as a quick, effective and rational operation of the participants in the proceedings, taking into account principles of efficiency and savings of financial resources.¹²

Case Study Research

At the outset, it is worth highlighting some of the most important results of the case study. The analysis of the obtained data was made with the courts divided into three groups. Group I included the court in Warsaw, the capital of Poland. The reason for that is that other courts located in the country are modeled on it and its functioning. Group II included courts in cities with more than 400,000 – 550,000 inhabitants – the District Court Poznań-Stare Miasto in Poznań, the Dis-

10 Ksymena Rosiek, “Skuteczność – przegląd definicji”, *Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie*, no. 771. 2008: 125.

11 Frankfort-Nachmias, Nachmias, 86.

12 Orfin, *Sprawność*, 26–39.

district Court for Wrocław-Fabryczna in Wrocław, and the District Court Szczecin-Centrum in Szczecin. The selection of these courts was justified not only by the number of inhabitants of these cities, but also by their location in Poland: Poznań lies in the Wielkopolskie Province, Wrocław in the Dolnośląskie Province, and Szczecin in the Zachodniopomorskie Province. It is crucial to understand the court mechanisms in cities with very high populations and high caseloads. Further, for group III it was decided to select courts in cities with fewer than 50,000 residents – the District Court in Giżycko, the District Court in Krosno, and the District Court in Wałcz. Here as well, the criteria for selecting these courts were the number of city residents (29,000 – 48,000) and their geographical location: Giżycko (30,000 inhabitants, Warmińsko-Mazurskie Province), Wałcz (26,000 inhabitants, Zachodniopomorskie Province) and Krosno (47,000 inhabitants, Podkarpackie Province).

The same information was analyzed for each court, i.e. the total number of cases, the number of completed and unfinished cases, the number of cases heard in the ordinary and special procedures, the financial condition of the court and employment. The costs selected for the purpose of this study have been divided into direct and indirect. The direct ones relate to specific criminal proceedings and all their elements, e.g. the cost of court experts, reimbursement of travel expenses of witnesses, costs of legal aid provided ex officio, fees for correspondence. In contrast, the indirect ones are those that do not directly relate to a single criminal proceedings but are necessary for the court's operation. Among the indirect costs, the following can be distinguished: 1) purchase costs, which include the purchase of materials and equipment, depreciation of buildings, purchase of energy, purchase of Internet access, telephone services, administration and rent fees, property taxes, the salaries of experts, translators, and retired judges, the costs of maintenance services for office equipment, alarm systems, and small repairs and renovations in buildings. The following may also be included in this division: salaries and benefits for employees, judges and assistants, salaries of administrative employees (officials), salaries

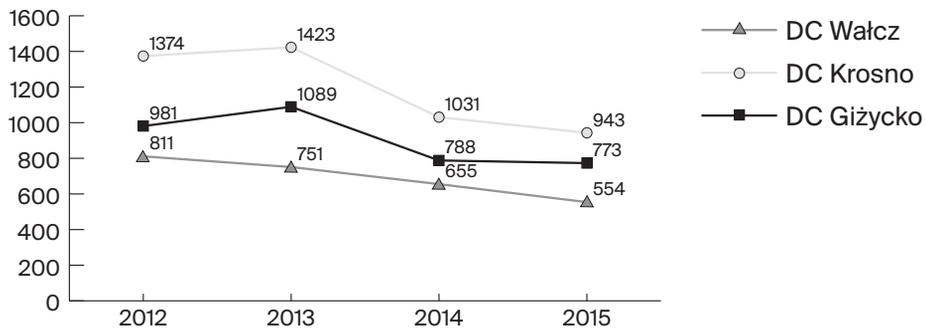


Figure 1. Inflow of criminal cases, K repertory of group III in 2012–2015.

Source: the author's own research.

of employees who are not clerks (e.g. janitors, security guards, porters), social insurance, company social benefits funds, employee training.

To start with, let us analyze the values for criminal cases in the K repertory in 2015 in the District Court for the Capital City of Warsaw. In 2015, 948 cases were brought before the court. The number of closed cases stood at the level of 1108. At this point, it should be emphasized that the number of closed cases also includes those cases that were brought to the court before 2015. The number of unfinished cases was also analyzed. In 2015, there were as many as 831.¹³

The inflow of criminal cases in the group of courts in cities with fewer than 50,000 inhabitants is presented in Figure 1.

The total inflow of all criminal cases (K repertory) in the DC in Giżycko in 2012 amounted to 981 cases, a year later it was the highest, with 1089 cases, and then significantly decreased to 788 and 773 cases in subsequent years. In 2012, 1,374 cases were brought before the DC in Krosno, while in the following year – 1,423. In 2014, there was a noticeable decrease in cases to 1031 and a year later to 943. In DC Wałcz, the inflow decreased year by year and amounted to: 2012: 811, 2013: 751, 2014: 655 and 2015: 554. The

¹³ Orfin, *Sprawność*, 199.

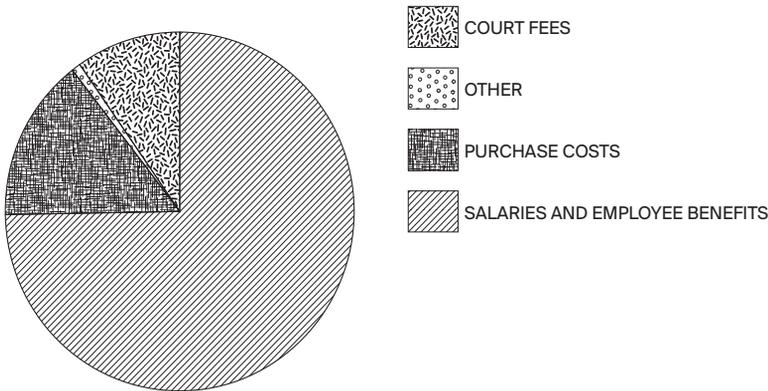


Figure 2. Percentage share of individual expenses in the budget of DC Szczecin-Centrum in Szczecin in 2012–2015. Source: the author's own research.

lowest inflow of cases occurred in the DC in Wałcz and the highest in the DC in Krosno. It is worth adding that the total number of cases concerns cases run according to the ordinary, simplified, prescriptive, private and accelerated procedures. Completed and unfinished cases were analyzed in the same way.

The analysis of financial matters will be presented on the basis of data obtained in courts in cities with more than 400,000 inhabitants – Poznań, Wrocław and Szczecin. Figure 2 presents the percentage shares of expenditures of the DC Szczecin-Centrum in the years 2012–2015. The highest percentage of expenses, 74.87%, was allocated to employee salaries and benefits, 14.62% to purchase costs, and only 9.48% to proceedings costs.

In turn, the purchase costs of the DC Poznań-Stare Miasto are presented in Figure 3. The amount of PLN 1,917,041.71 was allocated to depreciation of the building. A little less, i.e. PLN 1,411,935.36 was spent on the purchase of external services.

In Figure 4, it can be observed that the expenses on court costs in the DC for Wrocław-Fabryczna in Wrocław in 2012–2015 amounted to approx. PLN 2,500,000.00.

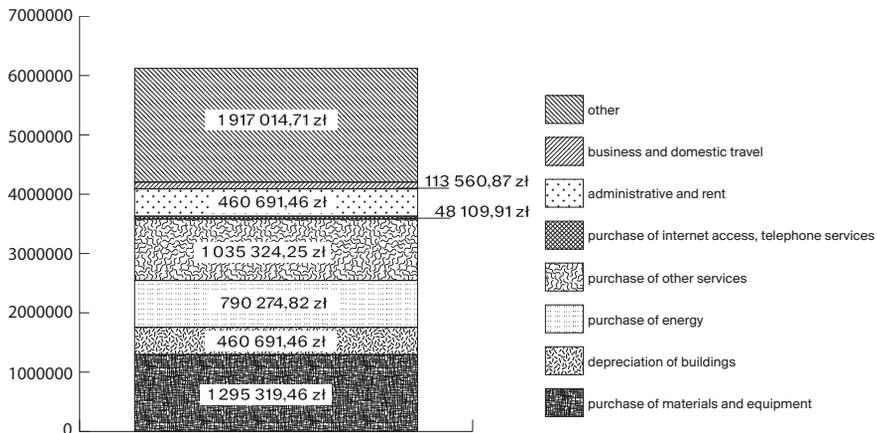


Figure 3. Purchase costs at DC Poznań-Stare Miasto in Poznań in 2012–2015.

Source: the author's own research.

It is puzzling that only PLN 70,000.00 was spent on compensation for excessive length of proceedings, taking into account the fact that almost a quarter of criminal proceedings of each court are carried out “with undue delay.” The above was found on the basis of examination of court files and questionnaires completed by the employees of the secretariat of the Criminal Division. As was the case in each examined court, also in this one the costs incurred by the Court (State Treasury), from which the party was released were not indicated – the data was not provided. PLN 70,000.00 was allocated for compensation for excessive length of proceedings. It is worth emphasizing that none of the analyzed courts indicated the amount of costs incurred by the State Treasury. Therefore, it is worth considering whether such costs are counted at all.

The research carried out in selected district courts in Poland made it possible to analyze the employment of judges, assistants and other employees. Figure 5 below concerns the employment level divided into district courts in Poznań, Szczecin and Wrocław in 2015.

The District Court in Wrocław employed the highest number of judges, as many as 100, while the one in Szczecin the fewest: 94.

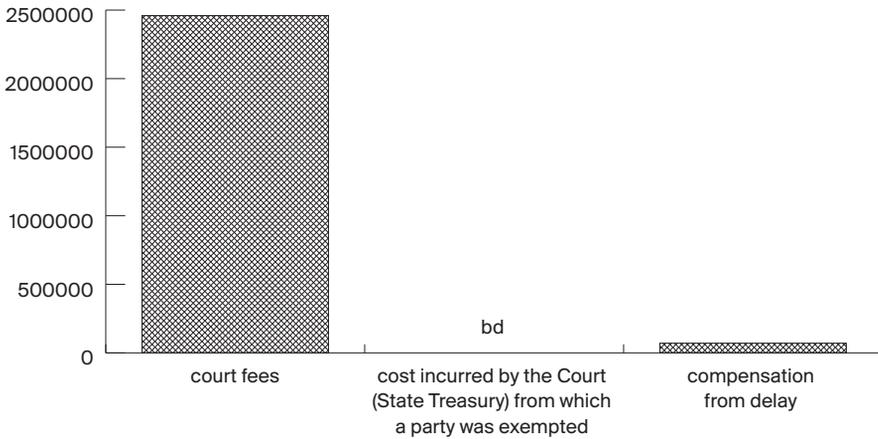


Figure 4. Proceedings costs incurred in DC for Wrocław-Fabryczna in Wrocław in 2012–2015. Source: the author’s own research.

Examination of Files in Criminal Cases

The files of criminal cases were also examined in the same courts as described in the case study. It is worth recalling once again that the research was conducted in January 2015 – August 2015, while the interviews with the secretariats of criminal departments took place in 2018. As part of the research, about 100 criminal cases in each court (a total of about 800 cases) were analyzed.¹⁴ The following information concerning criminal cases affecting the efficiency and costs of court proceedings was analyzed: the duration of the case before the court of first instance, the procedure (ordinary, simplified, prescriptive, private prosecution, accelerated), the manner of terminating the proceedings (ordinary, consensual, issuing a prescriptive or default ruling, discontinuation of the proceeding and conditional discontinuation of the proceeding), the number of defendants, the number of hearings, the number of adjournments and hearings of the case, the circumstance of temporary arrest or incarceration in a given or another case, the number of court experts (of various specialties),

¹⁴ Orfin, *Sprawność*, 213.

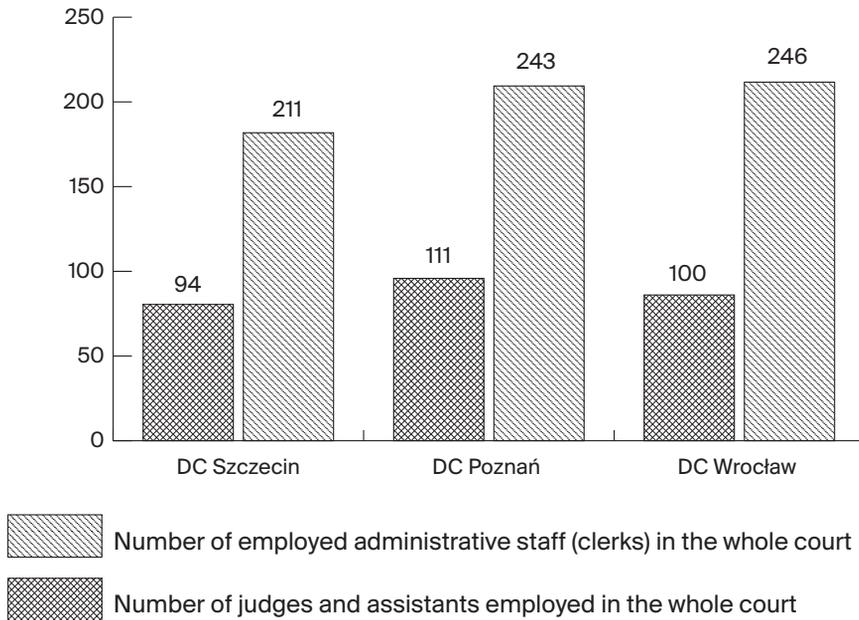


Figure 5. The number of employed judges and administrative staff in courts in Szczecin, Poznań and Wrocław in 2015. Source: the author's own research.

the number of witnesses, a defense ex officio. Regarding the costs of the proceedings, the following were considered: correspondence (flat rate), escorting (flat rate), claims of court experts, claims to witnesses (reimbursement of travel expenses and lost earnings), ex officio defense, costs of preparatory proceedings, the fee and other costs indicated in the decision concluding the proceedings, trial costs indicated in the order for the enforcement of the judgment, exemption from court costs, the entity responsible for bearing the costs of the trial: the convicted person; the State Treasury; convicted person and the State Treasury; mutual dissolution.¹⁵

Collected information subjected to verbal analysis also regarded the type of crime or the circumstances of exemption from trial costs. On the basis

¹⁵ Orfin, *Sprawność*, 213; Orfin, *Should*, 131–151.

of the conducted research, it should be stated that the most frequent crimes are those regulated in the provisions of the Penal Code,¹⁶ Articles 148–162 – crimes against life and health, 173–180a – crimes against safety in communication, and 197–204 – crimes against sexual freedom and decency. The most important quantitative conclusions on the basis of the analyzed cases are subsequently presented. Cases were examined in the following modes: ordinary: 25%, simplified: 38%, prescriptive: 11%, accelerated: 7%, and private prosecution: 14%. The endings of the proceedings were as follows: 44% of them ended in a consensual procedure (21% as a result of the application of the provisions of Art. 387 of the Code of Criminal Procedure, and 23% following Art. 335 of the Code of Criminal Procedure), 10% were discontinued (including 4% conditionally), 15% had a prescriptive sentence, 1% judgment in default, 21% of cases ended normally i.e. after the taking of evidence, a judgment was issued. Cases before the court of first instance lasted on average: up to 3 months – 57%, over 3 to 6 months – 20%, over 6 months to 1 year – 12%, over 1 to 2 years – 4%, over 2 to 3 years – 2%, and over 3 years – 8%. One court expert (of various specialties) appeared in 60% of cases, 2 experts in 10%, 3 and more experts in 5%. There were no experts in the remaining cases. Ex officio defense in court proceedings appeared in 75% of cases, a probation officer and sworn translator in 4%. In 90% of cases, one person was accused. Two – in 6%, three in 5%, four in 1%, five in 1% and more than five also in 1%. Regarding procedural acts, a line-up took place in 1% of all analyzed cases. In a ruling concluding the proceedings, the court adjudicated the amount of stamp duty in 95% of cases and the costs of proceedings in 100% of cases.¹⁷

Moreover, in 42% of cases, the court decided to exempt the convict from paying the costs of the trial and charges, and thus charge them to the State Treasury; in 40% of cases the convict was to pay, in 5% of cases the court cancelled the costs mutually, and in 3% of cases the private prosecutor was

16 The Act of June 6, 1997, the Penal Code, item 952, item 966, item 1214; Orfin, *Sprawność*, 212–222.

17 Orfin, *Sprawność*, 214.

to pay. In situations where the accused was released from the obligation to pay the costs of the trial and fees, they were not calculated at all. The inventory of expenses from preparatory and court proceedings was found only in 70% of cases. There were bills (invoices) for the work performed by court experts (or translators) in each case in which they appeared. The same is true for witness bills for reimbursement of travel expenses. Based on the analysis of court files and the literature, it should be stated that the total cost of a specific case before a court consists of a number of expenses. In order to estimate the average costs of criminal cases, it was necessary to establish two groups of costs. The first group consisted of administrative (indirect) costs related to the functioning of the court, while the second group covers procedural costs, which vary due to the nature of a specific case and might include fees of court experts, sworn translators and institutions appointed to issue opinions, witness fees, expenses for service of pleadings, the travel expenses of judges, prosecutors and other persons due to procedural acts; bringing the accused to the trial and transporting them (escorting), fees for inspections, tests undertaken in the course of the proceedings, storage of seized items, advertisements in the press, radio and television, and costs of mediation proceedings.

Analysis of court documents indicates that: 1) firstly, a list of expenses showing the costs incurred in the course of court proceedings is usually very general and imprecise, because it collectively presents all the costs incurred in the case and does not separate them according to individual defendants and specific activities; the list of expenses does not allow for the specification of individual costs, 2) secondly, costs are usually not recorded in a computer system, 3) thirdly, cases files often lack bills for activities performed or they are collected defectively. As a result of such a method of recording costs, the examination of cases takes longer and their actual costs (which in most cases are borne by the State Treasury) are usually higher than those indicated by the judicial bodies. Importantly, it is still unknown at what level they stand.¹⁸

18 Orfin, *Should*, 131–151.

If the convicts were exempted from paying the costs, then they were not estimated and recorded at all. As a result, it is not known what financial resources were spent and what part of the costs is borne by society. Particularly incomprehensible are the situations where at the same time the accused were charged with high fines or an obligation to repair the damage.¹⁹ However, if the costs were awarded to parties to the proceedings, their estimation consisted in the analysis of the files of the (pre-trial and court) proceedings and the calculation of individual expenses incurred in the case.²⁰ These activities were performed by employees of the secretariat of the executive department, and sometimes by the judge, or their assistant. Additional difficulties arise when in the same case some of the accused were exempted from incurring costs or awarded only to a certain extent (depending on the degree of guilt.²¹ The issue of the methodology of recording costs incurred as part of specific cases is also closely related to the discussed issues (the so-called *case accounting*).²² The costs are calculated incorrectly and inaccurately. Consequently, it is not known at what level they stand.²³

In connection with the above conclusions and on the basis of the survey, it was possible to establish the mutual relations between the efficiency of criminal proceedings and their costs. These are primarily as follows: 1) high efficiency is related to the optimal level of costs, 2) low efficiency (lengthiness) is related to a high level of costs, and 3) striving for high efficiency while optimizing costs results in the court fulfilling its social role. The aforementioned interdependencies are probably not the only ones that occur between the efficiency of criminal proceedings and their costs.²⁴

It is also worth pointing out that the most common problems related to the functioning of the courts regard: A) organizational and systemic issues: 1) sec-

19 Orfin, *Sprawność*, 214.

20 Orfin, *Sprawność*, 216.

21 Orfin, *Czy polski*, 539–548.

22 Orfin, *Should*, 131–151.

23 Orfin, *Sprawność*, 259.

24 Orfin, *Sprawność*, 250–253.

retarial staff only calculate costs which are to be incurred by the convicted person, and do not do so if they are borne by the State Treasury, which results in the lack of knowledge about the final amount, 2) lack of an appropriate computer system to work with in courts and law enforcement agencies, 3) disorder in the collected case files which often lack tables of contents, bills, invoices, record numbers (where the bill or invoice were filed). The problems were also B) substantive issues, namely: 1) frequent changes of legal regulations, 2) inadequate “shape and nature of legal provisions” and the way of formulating them, 3) case files often contained the total amount of all costs in the “other costs” column, and thus it was not clear what it consisted of. There were also some imperfections regarding C) personnel (personal) issues: e.g. 1) heads of secretariats of criminal divisions and court directors without firm and decisive personalities, 2) an insufficient number of staff, frequent staff reductions, and 3) low salaries of administrative staff.²⁵

One of the aims of this paper is also to establish the factors determining the efficiency of criminal proceedings. Based on the analysis of the literature and the conducted documentary examination, it can be stated that these are: 1) the procedure, 2) the manner of its conclusion (ordinary, consensual: pursuant to the provisions of Articles 387 of the Code of Criminal Procedure and 335 of the Code of Criminal Procedure, issuing a prescriptive or default judgment, discontinuation of the procedure and conditional discontinuation of the procedure), 3) the duration of the case before the court of first instance, 4) the number of accused persons, 5) the number of hearings and their adjournments, 6) the circumstance of pre-trial detention or incarceration in a given or another case, 7) the number of court experts (of various specialties), 8) the number of witnesses, and 9) ex officio legal assistance (defense ex officio).

On the other hand, basic factors (circumstances) determining the amount of the costs of the case in criminal cases are: 1) the administrative costs of the operation of the court, and 2) the costs of the trial. The first group of costs con-

²⁵ Orfin, *Sprawność*, 218–220.

sists of the administrative costs associated with the functioning of the court, including: the cost of energy, rent and administrative costs, personal expenses that are not salaries, the salaries of the court personnel, purchase of repair services, and purchase of medical or other services. The second group includes the costs of the trial, which vary due to the nature of a specific case. Here, costs are incurred due to: correspondence (flat-rate), escorting (flat-rate), fees of court experts, sworn translators and institutions designated to issue opinions, the travel expenses of judges, prosecutors and other persons due to procedural activities, bringing necessary participants to a hearing, fees for inspections, tests undertaken in the course of the proceedings, storage of the seized items, advertisements in the press, radio and television, costs of mediation proceedings, payments to witnesses (reimbursement of travel costs), ex officio defense, and costs of preparatory proceedings.²⁶

The Survey Conducted in 2016 and 2018, with the So-Called Quasi-Delphi Method

In addition, as part of the research, a survey was conducted using the so-called quasi-Delphic method, in one round, among experts in law and economics. The surveyed persons were judges, prosecutors, academics in the field of law or economics, lawyers, employees of the Ministry of Justice, legislators and persons responsible for regulatory impact assessment (RIA), as well as the administrative employees of courts – directors and employees (heads) of criminal divisions and administrative, accounting and financial departments in the district courts in Poland where the case study was conducted. Only a selection of the most important results of the survey will be presented here. The analysis of the obtained data was oriented towards an attempt to establish the understanding of the efficiency of the criminal proceedings and their costs, as well as their mutual relations.

²⁶ Orfin, *Sprawność*, 213.

First, the respondents were asked to define the efficiency of criminal proceedings. Among the most frequently indicated answers was the phrase that efficiency is an element of: 1) the principle of a fair (honest) trial – 72%, and 2) the principle of speed of criminal proceedings – 62%.

Moreover, the polled people were asked to evaluate the importance of the efficiency of the proceedings in a criminal trial. The vast majority – 83% of the respondents – considered the efficiency of criminal proceedings to be very important. Only 17% of experts considered it to be just important. Nobody indicated that it is unimportant. Another examined issue was the assessment of experts as to their opinion on whether criminal trials in Poland are conducted efficiently. Almost half of them, 48%, replied that they were not being run efficiently, whereas 37% of the respondents could not answer this question.

Factors particularly important from the point of view of experts for the efficient examination of cases are primarily the proper management of the secretariat by the chairperson or judge (77%) and an appropriate flow of information between employees of the department and the judges (assistants) conducting the case.

In opposition to the factors influencing the efficient examination of cases, the factors that have the greatest impact on their delay were taken into account. More than half – 66% of the respondents (all judges, prosecutors) were able to list the factors which, in their opinion, have the greatest impact on delays in examining cases. They included the following organizational issues: 1) poorly conducted proceedings, 2) too frequent adjournment of cases (often unjustified), 3) unpreparedness of judges for trials: superficial knowledge of cases, and 4) fear of passing sentences.

Further, it was necessary to analyze what, according to experts, adds to the cost of examining a criminal case. It was unanimously indicated (100%) that the costs of a criminal case should include court costs (the fees and expenses incurred by the State Treasury since the initiation of the proceedings). The vast majority of respondents (83%) also mentioned the parties' reasonable ex-

penses. In addition, 67% of the experts also indicated the administrative costs of the operation of the court.²⁷

The most important issue here, however, was the definition of the relationship between the efficiency of criminal proceedings and their costs. At this point, it is worth noting that the vast majority of experts (74%) believed that case adjudication indeed depends on appropriate financial outlays. However, 26% of experts did not agree with such a statement. On this basis, it can be concluded that there is an undeniable relationship between the costs and efficiency of court proceedings.²⁸ Further analysis involved an issue similar to the previous one, with the difference that it concerned the relationship between the efficiency of proceedings and the way in which judicial bodies operate. All respondents – 100% – gave a positive answer: yes, such a relationship exists. Here, a particularly significant question concerned the costs specified by the judicial bodies (and recorded in the case files). Namely, could they differ from those that are actually incurred? Most respondents, 41%, selected the answer: yes, the actually incurred costs may be higher than those shown by the judicial bodies.²⁹ It was also important to obtain information on the factors that have the greatest impact on the generation of the unnecessary financial costs of the examined cases. There were two answers to choose from: “I do not know” and “Please list these factors.” As many as 54% of experts decided that they did not know. Other respondents provided their own answers: the length of the proceedings, the need to use expert opinions in cases where it would be possible to replace them with other evidence, or the lack of appropriate office equipment in the courts. Therefore, it can be very firmly stated that the awareness of experts as to the costs of the proceedings is insufficient, which leads to inappropriate cost management.

In addition, experts unanimously agreed that there was a strong relationship between the efficiency of the proceedings and the way in which judicial

27 Orfin, *Sprawność*, 190.

28 Orfin, *Sprawność*, 192.

29 Orfin, *Sprawność*, 193.

bodies operate. The way in which they work, the number of people involved and the financial resources associated have a significant impact on the efficiency and costs of criminal proceedings. Such a conclusion confirms that the efficiency of criminal proceedings is determined by their costs.

Discussion and Conclusion

The most important conclusions from the conducted research are summarized below. Firstly, in none of the analyzed courts did the case study allow for indication of amounts of costs borne by the State Treasury. This can be related to the experts' answers regarding the question on how to record them; according to the respondents, the method is highly imprecise and hinders the work of judges and administrative staff. Therefore, it is worth considering whether such costs are counted at all.³⁰

Another conclusion could be made on the basis of factors determining the efficiency of the procedure which were analyzed during the documentary research, i.e.: 1) the procedure, 2) the manner of ending the proceedings, 3) the number of accused persons, 4) the number of hearings, 5) adjournments in total, 6) the circumstance of pre-trial detention or imprisonment in a given or another case before a court, 7) the number of experts, 8) the number of summoned witnesses, 9) both private and ex officio defense, and 8) the duration of the proceedings before the court of first instance.

The basic factors (circumstances) determining the amount of the costs in criminal proceedings are both the administrative and operational costs of courts and the trial costs, which vary according to the nature of a particular case. Here, costs are incurred due to: correspondence (flat-rate), escorting (flat-rate), the fees of court experts and sworn translators, the travel expenses of judges, prosecutors and other persons due to procedural activities, bringing necessary participants to a hearing, fees for inspections, tests undertaken in the

³⁰ Orfin, *Sprawność*, 258–259.

course of the proceedings, storage of the seized items, advertisements in the press, radio and television, costs of mediation proceedings, payments to witnesses (reimbursement of travel costs), ex officio defense, costs of preparatory proceedings.

It is worth noting here that the unit cost of a case should always be the result of the quotient of the total costs and the number of calculation units. The total costs would be the sum of the direct and indirect costs of the court case divided by the average number of cases completed per year. However, it is extremely difficult to determine by what average number of cases in a year the total costs should be divided (should completed criminal cases be included, those that have begun, or those that are still pending?). Additionally, despite the legal provisions, each case is simply different, and the random and human factors should be taken into account.³¹

It has become possible to establish mutual relationships between the efficiency of criminal proceedings and their costs. First and foremost, these are: 1) high efficiency is related to the optimal level of costs, 2) low efficiency (lengthiness) is related to a high level of costs, 3) striving for high efficiency while optimizing costs results in the court fulfilling its social role. The above-mentioned interdependencies are probably not the only ones that occur between the efficiency of criminal proceedings and their costs. There are more of them and they are accompanied by derivatives.³²

On the basis of the above considerations, analysis of the literature and conducted empirical research, it can be stipulated that a specialized computer program would offer more details regarding the relationships, as it would enable: 1) evaluation of the efficiency of the proceedings, and 2) precise calculation of the costs (*case accounting* using computer technology). The use of such a program would certainly allow for a more sensible use of funds and a more prudent planning of their spending. It should, in particular, make it possible to

31 Orfin, *Sprawność*, 222.

32 Orfin, *Sprawność*, 250–253.

enter information concerning the duration of the case and the manner in which it is conducted, the participants in the proceedings and related costs, e.g. fees from court experts. Every single piece of information should be highlighted in the computer program used in a given court. Then, the final amount should be automatically counted, at each stage of the investigation and court proceedings, in each instance of the proceedings. In this way an integrated computer program (system) could be created and operated.³³

In conclusion, it should be said that the nature of the efficiency of criminal proceedings affects the level of generated costs. Moreover, the total costs of criminal proceedings are determined by factors such as the number of accused persons and the form of the adjudication (consensual or ordinary mode), the number of witnesses and court experts and the fact of providing legal aid ex officio. It should be added here that the quality of examination of cases depends on financial outlays. The larger they are, the more efficient the process is. Moreover, the costs indicated by the judicial bodies do not coincide with those actually incurred; to be precise, the actual costs may be higher than those indicated by the bodies.

It should also be emphasized that, according to more than half of the respondents (52%), determining the relationship between the efficiency and costs of criminal proceedings is important both in the practical (including legislative work) and theoretical sense (for research objectives).

Moreover, in order to be able to improve the efficiency of (criminal) proceedings, it is necessary to have sufficient and in particular statistical data on the conducted cases, regarding the nature of the activities performed, their duration, and the procedure of examining cases (100% of experts' votes). Furthermore, in order to be able to reduce the costs of conducted proceedings, it is necessary to possess knowledge of their level and actual amounts.

Finally, it should be emphasized that, according to more than half of the respondents (52%), determining the relationship between the efficiency and

³³ Orfin, *Sprawność*, 259.

costs of criminal proceedings is important both in practical terms (including legislative work) and in a theoretical sense (for research objectives).³⁴

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34 Orfin, *Sprawność*, 257–261.

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