

SUMMARY OF THE DOCTORAL DISSERTATION

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The subject matter of the dissertation undoubtedly falls within important jurisprudential issues. Indeed, the institution of presenting charges is a theoretically complex issue, raising numerous interpretative controversies of major importance for criminal justice practice. Although much of the subject matter that is the subject of the study has already been discussed quite thoroughly, issues that have either been treated in a cursory manner or have generally not been addressed in the criminal trial literature have also been noticed. In addition, there are issues that, despite numerous studies, remain controversial and the question of their resolution continues to be open, especially for practitioners facing doubts about the interpretation of individual legal regulations. Finally, from time to time, demands are also made for the introduction of unfamiliar solutions to criminal procedure, which require a rational and well-considered position to be taken in this respect, especially when they involve significant changes within the pre-trial procedure.

A comprehensive analysis of the issue in question is therefore warranted, based on the current provisions of Polish criminal procedure, judicial decisions, and the scientific debate in this area. Apart from such fundamental issues as drafting the decision to present charges, its announcement, the questioning of the suspect, the instruction of the suspect on their rights and obligations, as well as capturing the moment of the procedural effectiveness of the presentation of the charge, the modification of the charge or simplified forms of its presentation, an important part of the work should relate to consideration of the most debatable and as yet unresolved issues causing most difficulties for pre-trial authorities. These are, first of all, interpretational doubts related to the justification of the decision to present charges (Article 313(3) of the Code of Criminal Procedure), the problem of defining the moment of procedural effectiveness of the presentation of charges under the ordinary and simplified procedure, but also the issue of possible appealability of such a decision and extension of the State Treasury's liability for damages in the case of an unquestionably "unjust" presentation of charges. Finally, it is an assessment of the compliance of Polish procedural solutions with the fair trial standard and the requirements arising from the ECHR case law and EU Directive 2013/48/EU regarding

access to defence counsel and guarantees of the implementation of the right to defence at an early stage of a criminal trial.

The dissertation is structurally composed of thirteen chapters, which are divided into a thematically ordered number of subsections. The paper includes an introduction and conclusions, as well as a list of literature and case law.

Chapter I is a historical chapter, preceding the substantive considerations, which shows how the institution of presentation of charges has evolved in the Polish criminal process since independence.

Chapter II covers the issue of the factual basis of the decision, as well as the determination of the correct moment for the drafting of the decision to present charges. The following section discusses the structure of the decision, focusing largely on the specific requirements provided for in the wording of Article 313(2) of the Code of Criminal Procedure, in the form of the identification of the suspect, the “precise identification” of the alleged act and the legal qualification thereof.

Chapter III covers issues relating to the obligation to inform the suspect of the contents of the decision drafted, an obligation which undoubtedly occupies a prominent place among the activities comprising the institution of the presentation of charges.

Chapter IV presents the issue of the duty to instruct the suspect about their rights and obligations. Using the content of Article 300 of the Code of Criminal Procedure, all the rights and obligations provided for by the provisions of criminal procedure are detailed, and the time and manner of fulfilment of the indicated information obligation is discussed.

Chapter V deals with issues relating to interrogating the suspect. A detailed discussion of the course of the interrogation is made, the ways of recording the course of the indicated procedural action is discussed, and the issue of the possibility of the suspect providing explanations in written form in the pre-trial proceedings is raised. The participation of an interpreter in the interrogation of a suspect, as well as the suspect's right to be assisted by a defence counsel during the interrogation, is dealt with in quite some detail. Analysing the Strasbourg jurisprudence and the standards arising from the EU Directive 2013/48/EU regarding the participation of the defence counsel in the first procedural actions taken against the suspect, an assessment was also made of the current wording of Article 301 of the Code of Criminal Procedure. in terms of providing the suspect with an appropriate level of procedural guarantees.

Chapter VI deals with the possibility for the suspect to request that the grounds of the charges against them be stated orally, as well as to receive a written justification (Articles

313(3) and (4) of the Code of Criminal Procedure). It identifies the entities entitled to make such a request in light of the provisions of the law, discusses doubts related to the time limit for making a request to state orally the grounds for the charges, and assesses the 14-day time limit set by the legislator for serving a written justification on the suspect and the appointed defence counsel.

Chapter VII, in turn, seeks to answer the following question: What steps must be completed in order for a person to be presumed to have been held criminally responsible in a pre-trial procedure and thus to be granted the status of a suspect? Is it sufficient for the decision to present charges to be “drafted” for it to be “issued” or is the act of “promulgation of the drafted decision” still necessary for the effectiveness of “issuing (a decision to present charges)”. The problem is all the more complex because the concept of promulgation of this provision not uniformly understood either. An assessment of the views presented in the doctrine is therefore made, and cases in which it is not possible to follow the sequence of actions indicated in Article 313(1) of the Code of Criminal Procedure are discussed.

Chapter VIII draws attention to the fact that the presentation of charges, in addition to its procedural effects, also has repercussions relating to the sphere outside the pending criminal proceedings (extra-procedural effects). A distinction was thus made between: 1) consequences based on the applicable law (other than the rules of criminal procedure), amounting to the possibility or necessity to activate legal institutions against the suspect, resulting in a number of restrictions on civil liberties for the suspect, as well as adverse consequences in the sphere of their professional or social life 2) and consequences related to the broad public perception of the presentation of charges.

Chapter IX regulates the supplementation of charges where the suspect is charged with an act or acts not covered by a previously issued decision to present charges and the amendment of charges where the suspect is to be charged with an act in a substantially altered form or where an act already charged against the suspect is to be classified under a stricter provision. It explains what constitutes a substantially altered form of the act and discusses the criteria for the identity of the act. The issue of the admissibility of convalidation of deficiencies in the decision to present charges at the trial stage in the event of inconsistency between the act charged in the indictment and the act described in the decision to present charges was also analysed. Finally, an attempt has been made to decide whether merely changing the legal classification of the act to a more severe one justifies the decision to amend the charges.

Chapter X covers the issue of simplified forms of the presentation of charges, differing from the ordinary presentation of charges by reducing certain elements referred to in Article

313 of the Code of Criminal Procedure. Thus, the characteristics of the reduced manner of presenting charges taking place in the course of actions to the extent necessary (Article 308(2) of the Code of Criminal Procedure), in investigations (Article 325g(2) of the Code of Criminal Procedure) and in accelerated proceedings (Article 517c(1) of the Code of Criminal Procedure) have been characterised. At the same time, the problem of the effectiveness of the presentation of charges under the simplified procedure was discussed and given the inconsistent drafting of the provisions on reduced forms of presentation of charges, amendments to the existing regulations were suggested.

Chapter XI addresses the issue of the contestability of the decision to present charges. It constitutes a polemic against the postulates indicating the advisability of introducing the appealability of the decision issued under Article 313 of the Code of Criminal Procedure, as well as the decision issued under Article 314 of the Code of Criminal Procedure, i.e., on the amendment or supplementation of charges. Presenting counterarguments proving the unjustifiability of adopting such a solution, it was shown that the current provisions of the Code of Criminal Procedure sufficiently protect the rights of the suspect, while at the same time imposing a number of obligations on law enforcement authorities, in particular with regard to the presentation and modification of charges. It was pointed out that if such a decision were allowed to be challenged, serious difficulties would arise as to the scope of appellate review and the type of decision that could be taken by the court if the complaint were heard. The question of the relative suspensiveness of the complaint was also addressed and the issue of the suspect's access to pre-trial material was discussed.

Chapter XII is devoted to the issue of the legitimacy of extending the State Treasury's liability for damages in the event that the pre-trial authority wrongfully issues a decision to present charges. Existing statutory regulations on liability for damages were analysed in the context of solutions operating at the international level. Reference was also made to drafts previously submitted to the Sejm in this regard and a brief discussion was held on the recent draft bill on amendments to the Act - Code of Criminal Procedure (Document of the Senate, 10th Term, no. 239), which proposes that § 4 of Article 552 of the Code of Criminal Procedure should also provide for compensation and reparation in the case of “undoubtedly unfair” presentation of charges.

Chapter XIII, by analysing the applicable legislation and considering the views of the doctrine, attempts to define the concept of a suspect. Its procedural situation is analysed, with particular reference to the rights granted to them and the obligations incumbent upon them, and the issue of the right to a defence and the persons entitled to the benefit of this procedural

guarantee is discussed in detail. A significant part of the chapter is devoted to the origins and assumptions of EU Directive 2013/48/EU granting the “right to a lawyer” also to a person in relation to whom an action directed at criminal prosecution has been taken, and to the problems of implementing the indicated Directive into the Polish legal order.

The basic research method used in the study is the dogmatic method, which nowadays, apart from the exegesis of specific legal regulations, i.e. understanding the dogmatics of law in semantic terms (the so-called logical and linguistic method), also deals with the practice of law application, evaluates the existing solutions, and formulates *de lege lata* and *de sententia ferenda* postulates. Further considerations are based on this understanding of legal dogma. A limited use was also made of historical and legal analysis, where, on the one hand, the aim was to extract from the past data useful for reconstructing the historical process and explaining the current shape of the institution in question, and, on the other hand, to point to the origins of phenomena whose effects can be observed today.

The research conducted allowed for the realisation of the objectives set out at the outset and a comprehensive analysis of the issue identified. As a result, it has been assumed that the deficits in the procedural guarantees of a person held criminally responsible, as well as the need to improve the work of law enforcement agencies, require the correction of the provision of Article 313(3) of the Code of Criminal Procedure.

It has also been determined that the moment of the procedural effectiveness of the presentation of charges (subject to the exceptions indicated in Article 313(1) of the Code of Criminal Procedure) is the end of the announcement of the decision in which the charges are formulated in the ordinary procedure, as well as the end of informing (or, pursuant to Article 325g(1) of the Code of Criminal Procedure, notifying) the suspect of the content of the charges in the case of a formalised presentation of charges (Article 308(2), Article 325g(1), Article 517c(1) of the Code of Criminal Procedure).

A significant part of the work is devoted to the analysis of EU Directive 2013/48/EU, on the basis of which it is considered that it has not been effectively implemented into the Polish legal order, which poses a serious problem in terms of the functioning of legal uniformity and the possibility to assert before national courts the rights arising from the directive in question. Considering the Strasbourg jurisprudence and the standards arising from the EU Directive 2013/48/EU regarding the participation of the defence counsel in the first procedural steps taken against the suspect, the current wording of Article 301 of the Code of Criminal Procedure does not provide the suspect with an adequate level of procedural guarantees. In addition, the solution adopted under EU Directive 2013/48/EU granting the “right of access to a lawyer” also to a

person in respect of whom an action directed at criminal prosecution has been taken, does not give rise to the right of defence for the suspect, but requires a remodelling of criminal proceedings by introducing a definition of the suspect and extending the scope of their rights, in particular by creating real opportunities for the use of an attorney appointed under Article 87(2) of the Code of Criminal Procedure.

Reference was also made to the proposal to introduce the appealability of the decision to present charges, which, in the author's view, would have a crippling effect on the efficiency of law enforcement agencies and the work of the courts, and more generally on the administration of proper justice. The idea of introducing the State Treasury's liability for damages in the event of wrongful presentation of charges was also negatively addressed. This would not only lead to the creation of a disproportionately privileged position for the suspect, but also, it would deter law enforcement authorities faced with the risk of regressive liability from taking steps to issue a decision to present charges.

The paper ends with conclusions, while assessing the current regulations and formulating *de lege ferenda* proposals.