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THE EMERGENCE OF ABBREVIATED CRIMINAL PROCEDURES IN THE FIELD OF CRIMINAL LAW

In order to speed up a criminal procedure, especially the trial hearing, procedural alternatives to the ordinary proceeding have been designed in several European countries. These implement simplified mechanisms and consist of various forms of accelerated trial: trials without long and complicated pre-trial proceedings, written proceedings designed to obviate the trial stage altogether. These various procedures are usually characterised by simple systems of presenting evidence, and have a common feature in that they allow for consent of the parties, although the judge retains ultimate control. The aim of different types of special (abbreviated, direct, immediate) criminal proceedings is to eliminate the usual trial hearing by making it possible for a final judgement to be given at an earlier stage or by providing an opportunity for presenting the offender directly to the trial judge, bypassing the preliminary stage. Recently, Slovenian Criminal Procedure Code has introduced a new form of an ordinary proceeding, the criminal order procedure, commonly used in several European countries. This kind of a summary procedure is available to the public prosecutor at any point from the end of the preparatory phase onwards. Slovenian efforts are now concentrated on the issue of changing the Criminal Procedure in the light of various common law experiences of the continental and common law countries. Negotiated justice finds its most complete expression in such procedures as plea-bargaining or guilty plea, which have long been known in the USA and the UK. Recently, these procedures have made a considerable impact on the criminal procedure issues in our country as well. While some countries seem to place emphasis on the guilty plea in order to speed up a criminal procedure, others seem to seek to improve the efficiency of their criminal procedure by other means. Slovenia shall try to reach the simplicity, speed and efficiency of the criminal procedure by way of implementing a few special criminal procedures, some of which make it possible for a final judgement to be given at an earlier point in the proceeding, the others eliminate the preliminary or pre-trial phase in order to proceed directly to trial.

INTRODUCTION

"Study and interpretation of criminal procedure are integral parts of introduction law. Law is expected to serve the purpose of regulating social life. The goal is accomplished if people to whom these norms apply, conform to them. Understanding the law as mere application of sanctions against the perpetrators is too narrow. The law is applied successfully when law subjects are using it of their own will". (Kušej,1996). The essence of law is its demand that people act and behave in a certain manner. Physical violence is understood as limitation of human rights and unpleasant interference in to one's economical, social and legal status.

The study of crime and criminal justice illuminates some of the basic problems faced by society. They are in a very strong connection with the most important aims the criminal procedure tries to reach and imply in the modern democratic society. One of these is how to provide a safe environment in which citizens can carry on their personal and professional lives without fear that they or their property will be threatened (Fairchild,1993). Another is how to devise a fair and expeditious way to deal with

those who are accused or suspected of disrupting the safety and security of the community. The basic instruments to accomplish these objects are repression and punishment.[1] The state should use them to discourage "private retribution" - *nec cives ad arma ruant*. The next basic aim is to protect the individual from arbitrary and unlawful acts of state repression organs (Bavcon,1996). The citizen has his human rights and freedoms during the phases of prosecution, trial and penalization. The principle of legality provides that penalization is effected only in accordance to a law, that has passed before the commitment of criminal act and has been used in lawful way.

Criminal law reform is characteristic of the last thirty years for the European countries. When launching a reform project, it is therefore essential to determine how the criminal justice system operates, not only from the viewpoints of the public authorities, the judges, the prosecutors, the police, but also from that of the accused and the victim. The new criminal procedure codes have already been more or less adopted. Looking from general point of view they were influenced by Anglo-American trial process. The growth in interest in adversariality and its consequences has been immense and universal. The strong external pressure came from demands of the European Convention on Human Rights and the European Community as well.

Among the first there was Germany with a radical redesign of criminal procedure in the midst of 1970's. In 2003 Bosnia-Herzegovina also completely changed the concept and introduced the adversarial criminal procedure model. At the end of 1980's Italy similarly made a decision for a comprehensive change of the criminal procedure model while some other countries like France, Netherlands, Belgium and Croatia aim for a different way of changing of legislation. They gradually alter some article complexes in a way that is dictated by new trends in Europe and are more or less successful in their approaching to the aforementioned objectives. Even France with their well established napoleonic criminal procedure (Nicolapoulos,1989, Hatchard,1996) could not resist these winds of changes. They had to abolish the institute of investigative judge. The most surprising fact is that they introduced the institute of plea guilty in their last novel of Criminal procedure code.

SOME DILEMMAS IN THE SLOVENIAN CRIMINAL PROCEDURE

It has been some years that our criminal law experts made their efforts to introduce a new concept of criminal procedure, yet there has been little progress in this way, since nobody tackled the problem of preparing theoretical starting-points for a new model. In recent years the legislator has been passing novels of the Code of criminal procedure (CCP) according to emerging momentary needs. Regarding the fact that Constitution court every now and then finds discords between CCP and Constitution the situation calls for a change in existing legislature.

Due to non-systemic interventions it is difficult to execute adequate prosecution and court trial. Moreover, there are two basic principles in theory and practice, which appear to be in constant conflict for the recent period: first, there is the "mixed" concept of criminal procedure, that looks for the (material) truth in accordance with inquisitorial maxime and also offers some adversarial regulations of certain institutes. The second principle is based on the adversarial concept of criminal procedure which is being brought to practice through European Court of Human Rights and decisions of Slovenian Constitutional Court.

Here we offer a presentation of some statistical data which deal with the duration of criminal procedures in Slovenia.

Table 1.
The status of the criminal cases at the Slovenian local courts between 1995 and 2003

Year / Criminal case	1995	1996	1997	1998	1999	2000	2001	2002	2003
New	7707	8223	8895	9401	10279	9817	10317	10338	10550
Solved	5989	6184	7927	8576	8898	9435	9705	10977	11087
Unsolved	11829	13897	14865	15690	17071	17453	18066	17427	16889

Sources: Ministry of Justice "Court statistics" from 1995 to 2003

Table 2.
The status of the criminal cases at the Slovenian district courts between 1995 and 2003

Year / Criminal case	1995	1996	1997	1998	1999	2000	2001	2002	2003
New	1693	1996	2380	2471	3316	3264	3692	3594	3347
Solved	1441	1632	2112	2205	2610	3203	3346	3439	3531
Unsolved	3518	3877	4144	4410	5116	5177	5523	5678	5678

Sources: Ministry of Justice "Court statistics" from 1995 to 2003

Table 3.
The lasting of the criminal procedure from filing of a charging document to the final court decision at the local courts between 1995 and 2003

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Up to 3 months	18,8%	15,2%	13,9%	16,2%	13,8%	13,4%	13,3%	13,2%	11,9%
From 3 to 6 months	16,3%	14,1%	11,4%	12,7%	9,8%	10,5%	8,9%	10.2%	10,3%
From 6 to 12 months	21,1%	22,0%	18,2%	16,5%	15,4%	15,0%	14,5%	15,2%	16,3%
More than 12 months	43,8%	48,7%	56,5%	54,7%	60,9%	61,1%	63,3%	61,2%	61,4%

Sources: Ministry of Justice "Court statistics" from 1995 to 2003

Table 4.
The lasting of the criminal procedure from filing of a charging document to the final court decision at the districts courts between 1995 and 2003

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Up to 3 months	22,8%	21,4%	19,6%	19,9%	20,4%	19,3%	17,0%	15,9%	14,8%
From 3 to 6 months	18,0%	15,6%	18,3%	15,0%	14,7%	15,3%	13,5%	13,8%	14,4%
From 6 to 12 months	20,5%	16,1%	16,1%	15,5%	15,1%	17,2%	17,7%	21,5%	20,4%
More than 12 months	38,7%	46,9%	46,0%	49,6%	49,8%	48,2%	51,8%	48,8%	50,4%

Sources: Ministry of Justice "Court statistics" from 1995 to 2003

When interpreting statistical data much prudence is recommendable. There are numerous factors that influence the lasting of criminal procedure and in consequence, the infringement of the right to trial in a reasonable time. ECHR finds evidence that a lengthy criminal procedure does not necessarily mean that it is being deliberately violated. By my opinion, the conclusions about the duration of the criminal procedure can be drawn from the presented statistical data only. It is not affordable to make some other conclusions or even to discuss about the active or pasive role of the judge, the public prosecutor and other participants in the pre-trial and the trial phase. The reasons for the eventual delay should be searched for by other means, for example with an empirical research project of the real situation, dealing with a profound analysis of the actions of the aforementioned subjects. Their activities should be investigated both

quantitatively and qualitatively. Still we can be sure to say that the existing criminal procedure legislation represents a factor that combined with some others inhibit the realization of social functions of the criminal procedure.[2]

In the last three years the inclination has grown in our theoretical and judicial circles to make some changes in Slovenian criminal procedure. Some experts are enthusiastic about a comprehensive change of the concept of the criminal procedure favouring the adversarial model. Some other prefer to introduce changes progressively, inclining more or less towards the adversarial option. The last group of experts vows that a radical change is needed while realizing that automatic implementation of foreign criminal procedure institutes can be harmful to the extent of dissolving established and traditional working methods in our legislation system.

The adversarial model doctrine surely has some imperfections which have already been discussed in USA in 1930's and should therefore be considered when implementing the adversarial criminal procedure model. One of the delicate matters being frequently pointed at by common law establishment states law experts is the "guilty plea" institute. It can be very controversial from the aspect of the protection of the defendant's rights that apply during the criminal procedure. Even the USA Supreme court expressed some reservations in this institute (Silver; 1989; Hatchard, 1996). Ashworth (1998) quotes nine famous criminal cases where the presumption of innocence has been severely injured by the use of the plea guilty institute, showing the weaknesses of the adversarial model. There has been much polemic discussion about it during the notorious trials of O.J. Simpson (1995), Mike Tyson (1992) and some others. Media focus and public reactions claimed a validation of the angloamerican criminal procedure system.

A BIG CHANGE IN THE SLOVENIAN CRIMINAL PROCEDURE CONCEPT

To start the criminal procedure reform a good theoretical basis offering alternative solutions for a new establishment is needed. At the same time it is unavoidable to perform a full analysis of the execution of law principles in practice. By the end of 2003 a two-year research project dealing with the strategies of criminal procedure modernization in Slovenia has been accomplished.[3] The research offers the ideas for the new model of criminal procedure. The main idea is the step towards the more adversarial type of procedure. We propose the abolition of the phase of investigation and the introduction of the unitary preliminary phase. (Šugman, 2003). In that respect the main hearing (the trial) becomes the centre of the proceedings, which was one of the desired goals. As a novelty we introduce the so-called intermediate stage, taking place before main hearing. During that phase the parties can file different motions and as a result the judge of freedoms either sustains the accusation or dismisses it. During this phase the accused can choose between ordinary criminal procedure or one of the special proceedings-simplified or summarised ones. The logical consequence of abolishing the phase of investigation is also the abolition of the investigative judge. We introduce the judge of freedoms, which contrary to the investigative judge, has no investigative powers but acts as the guarantor of the individual rights and freedoms Šugman,2003).

The public prosecutor is becoming *dominus litis* of the preliminary procedure and gets stronger powers to direct the police. He is doing under the principle of legality and partly under the opportunity principle. This can encourage him to choose and make a proposal among various different forms of diversion (different kinds of settlements, mediation etc).

The inquisitorial maxime is not completely abolished, the trial judge is becoming more passive and as a result of that also more impartial and the parties would have to become more active being the real representatives of the case.(Šugman,2003). The part of the research is also the detailed proposal of measures infringing the right to privacy (investigative measures, detention, etc) providing stricter and higher standards than the existing ones.

The second research project has been recently terminated in June this year.[4] This project is rather empirical than theoretical research about analysis of the criminal procedure in Slovenia. We analysed all criminal cases that were concluded with final judicial decision in June 2002. The analysis included all local courts, district courts, higher courts and the Supreme Court of Slovenia. Every criminal case we analysed from the beginning (criminal complaint) to the end (the final court decision). Our research was dedicated to following objectives (Bošnjak, 2004): to study process subject's qualitative characteristics, especially the defendant's; to study some characteristics of indictments and pleadings; to study essential characteristics of particular phases of the criminal procedure (above all the process and duration); to set and check hypotheses to explain the origins of time parameters (chiefly duration) or at correlations between certain facts and outcomes of criminal procedures; to assess delays in particular phases and in general from the standpoint of their permissibility, comparing them with other aims of criminal procedure and various conceptual items; where appropriate, to suggest organizational and normative changes or to propose other activities, where presumable reason for delays cannot be suppressed merely by normative changes.

One of the most important results of the research project is the estimation of duration of the criminal proceeding from the moment of the act of offence to the end of the case:

Table 5.
The time between the act of offence and the final judicial decision (the local courts in Slovenia)

Time lag-days	No. cases	Percentage	Percentage others	Percentage Ljubljana
0-90	10	1.7%	2.2%	0.0%
91-181	20	3.5%	4.0%	1.6%
182-273	28	4.9%	5.8%	1.6%
274-364	35	6.1%	7.1%	2.4%
365-455	31	5.4%	6.0%	3.2%
456-546	28	4.9%	6.2%	0.0%
547-638	44	7.6%	9.3%	1.6%
639-729	43	7.5%	8.8%	2.4%
730-820	47	8.2%	8.0%	8.9%
821-911	32	5.6%	6.0%	4.0%
912-1003	23	4.0%	3.8%	4.8%
1004-1094	25	4.3%	4.2%	4.8%
1095-1185	35	6.1%	5.8%	7.3%
1186-1276	21	3.6%	2.9%	6.5%
1277-1368	27	4.7%	2.4%	12.9%
1369-1459	20	3.5%	2.7%	6.5%
1460-1550	24	4.2%	2.9%	8.9%

1551-1641	8	1.4%	1.3%	1.6%
1642-1733	12	2.1%	1.3%	4.8%
1734-1824	4	0.7%	0.7%	0.8%
1825-1916	10	1.7%	2.2%	0.0%
1917-2008	10	1.7%	1.1%	4.0%
2009-2099	8	1.4%	1.3%	1.6%
2100-2190	8	1.4%	0.9%	3.2%
2191-2281	16	2.8%	2.0%	5.6%
2282-3000	7	1.2%	1.3%	0.8%
Total	**576**	**124**		**452**

Sources: The Analysis of Criminal Procedures in Slovenia

The table shows data separately for the local court in Ljubljana and for all other local courts altogether.[5] The number of cases at Ljubljana local court is larger compared to other courts and beside that they are faced with shortage of personnel and organizational difficulties of a different nature than elsewhere. From the data shown it is evident that the time span between the act of offence to the case closure is two years and seven months on the average, and typically over two years. It should be emphasized that more than a third of all cases needs more than three years to be brought to end. The procedure at local court should be shorter, at least compared to shown time spans. The possible reasons for summary procedure malfunctioning are among others organizational and technical complexity of cases, and above all problems arising from the absence of defendants and witnesses; organizational and technical problems in court work management combined with the absence of clear directives how to overcome these problems, especially to provide regular presence of criminal procedure subjects; judge overwork due to organizational tasks and some other unfavourable conditions affecting their performance (Bošnjak, 2004). There are other arguments indicative of the court, the public prosecutor, the police, the accused and of the others, involved in the criminal procedure, ill-designed legislature considering the proceeding of certain phases of criminal procedure etc.

SIMPLIFICATION AND ACCELERATION OF THE CRIMINAL PROCEDURE[6]

Guilty plea institute is certainly one of the most widespread mechanisms to effectively shorten the criminal procedure. In addition to it most of continental European countries adopted several instruments and special criminal procedures in order to simplify criminal procedure for special categories of criminal cases. The best known example of this kind of procedure is a penal order procedure.

The countries have different experiences about simplification and accelerating. Italy has developed a number of these procedures, and to the contrary to the German system, they are able to bring to the end some most complicated cases. The complexity of the case seldom has influence upon the choice of the type of the criminal procedure. There are instances where public prosecutor is faced with a complicated state of facts and therefore he may in such a case decide to warrant a simplified or accelerated procedure in order to avoid an ordinary criminal procedure

All countries that have these procedures in their legislation agree that they are especially suitable for flagrant crime perpetrators. French system differs from others in the fact that public prosecutor has a wide range of instruments to quickly terminate the case, especially in the field of suitable selective mechanisms. The countries where the procedure is based on adversarial model never favoured the way of simplification and

accelerating of procedures as adopted by continental European countries. The criminal procedure's delays are practically unknown due to the widespread use of a guilty plea and more than 80 % of cases are closed in this way. This means that a minority of cases is brought to the court. The criminal procedure in these cases is relatively short, rarely exceeding two years in cases where bringing evidence is complicated or in the case of the most severe offences. Nevertheless, these countries realize that "pure" adversarial model does not fulfil all the expectations that should be pursued with a modern criminal procedure. A short criminal procedure while being a benefit for the taxpayers doesn't always bring justice to the defendant.

In some continental European countries the principle of opportunity is well established. It is frequently being used in minor cases. In accordance to this principle the public prosecutor decides to use certain selective mechanisms as they are mediation, reparation, paying certain sum for charities etc. Germany, the Nederland and France are fairly successful at reducing the number of criminal cases. At the same time these selective mechanisms bring some benefits both to the victim and the defendant.

SIMPLIFICATION AND ACCELERATION OF THE CRIMINAL PROCEDURES (SPECIAL MODELS OF THE CRIMINAL PROCEDURES) IN SLOVENIA

More than a mere reform of the ordinary procedure, the changing of the concept of criminal procedure is a creation of efficient selection mechanisms that make it possible to sort out those cases at the beginning of the criminal procedure, that do not strictly require the use of a criminal law repression. An introduction of the useful simplified and accelerated criminal procedures is the next option, which has been adopted by the aforementioned countries with the aim to close the majority of cases where the sentence has to be done. The ordinary criminal procedure is therefore used in the minority of all cases.

In Slovenia now we are at the beginning of the reform of the criminal procedure. We are considering both the reform of the ordinary procedure and the summary procedure. The first Slovenian Code of Criminal Procedure (1994) introduced some institutes considering the selective mechanisms. Both institutes were intended for a minor case offenders. So there is a choice of some mechanisms to speed up solving the criminal cases which should satisfy both parties, but there are the opinions that the judicial practice didn't yield expected results.

Fišer (2001) discussed these problems in several articles constantly reiterating the non-adequacy of the present concept of the summary criminal procedure. This is a fairly frequent type of procedure and like the court statistics show there are approximately two thirds of criminal cases that are being processed by it at the local courts. There are two main reasons: that the weight of the offence is the sole reason for deciding that minor offences have to be tried by summary procedure, and that for more than a half of offences as defined by Criminal Code the maximum penalty doesn’t exceed 3 years of prison. In our country we have (article 170 of CPP) but one lege artis summary procedure (exactly the one that is being most rarely used). This is the criminal procedure which is based on a direct indictment and in accordance with the investigative judge. It is the instrument used by the public prosecutor to press the charges without the investigation as a phase of the criminal procedure. A judicial control is warranted by the investigative judge to the cases where the penalty exceeds 8 years of prison.

The severity of offence remains the most important criterion to dictate the introduction of the summary procedure. Regarding the assumption for the procedure to be fast and

efficient some of its institutes are different compared to the ordinary procedure. However, the imperative to be efficient shouldn't obscure other objectives, among others the protection of the human rights of the defendant (or the accused), when entering the pre-trial or the trial phase. While the provisions of this procedure show that these rights can be acknowledged it may be the case that they can be restrained at the loss of the defendant in order to speed up and be efficient.

FUTURE PROSPECTS

The theory puts forward rather stringent starting points and demands for the simplified and summary procedure. In case of omittance of one or more phases of the regular procedure it is called the summary procedure, while the simplified procedure is the one consisting of all phases which are not performed in entirety: for instance, the main hearing is proceeded regarding the circumstances affecting only the sentence. Both proceedings are set on objective basis (e.g. a severity of an offence, a weight of the evidence) or on a subjective one (a consent of both parties-the accused and the prosecutor, or by suggestion of one party, to which the other agrees).

When performing the comparative survey including other countries the conclusion emerged that practically all apply such summarised and simplified procedures (sometimes they are called expedited), which combine both basis. That means that the severity of the offence shouldn't be the sole criterion to warrant the summarised or simplified procedure to the particular case. According to our CCP the summary procedure has to be always applied to cases where the sentence is a fine or imprisonment up to three years, with some exceptions. As already mentioned, only in the procedure of issuing the penal order our legislator made a progress. The legal consequences of the offence may, in the case of less serious offences, be imposed upon a written application by the public prosecutor, in a written penal order without a main hearing. The public prosecutor shall file such application if he does not consider the main hearing is necessary. The judge has to verify the penal order. If he considers that there are sufficient grounds for suspecting the indicted accused, he shall issue the penal order. Within eight days following the service of the penal order the defendant may lodge an objection against it. Where the objection to the penal order is not lodged in time the order shall be equivalent to a judgement that has entered into force.

The Committee of Ministers of the Council of Europe issued the Recommendation No. R (87) 18 in 1987 dealing with simplifying the criminal procedure. There the institute of plea guilty is not rejected but to be applied under specific conditions. It is a common impression that they all encourage the use of such procedures, both in theory and practice. Also it is a fact that they all introduced them by reforming the regular criminal procedure. The next thing in common is that the prosecutor decides to apply such a procedure by himself or is suggested to do so by the accused whether formally or informally. The defendant should never be pressed to enter this procedure against his will.

WHY SHOULD THE ACCUSED DECIDE TO GO THROUGH THE SIMPLIFIED OR ACCELERATED CRIMINAL PROCEDURE

Throughout the history of criminal proceedings, and today under the Anglo-American system, one significant factor that without any doubt helps to simplify and shorten proceedings is a confession. Formerly, the confession was ideal way to establish liability. Later, confession lost its position at the prime source of proof (Swiatlowski, 1999), and numerous other forms of settlements previously unknown came into being. However, other settlements do not replace the confession as such, but rather build onto it, by functioning on the basis that the defendant is offered certain advantages in return for

his confession. There are also different sorts of criminal procedures that bear no direct relation to confession. This type of procedure has to offer a kind of "reward" for defendant's agreement to put himself under the special kind of shortened or simplified criminal procedure. The advantages (the rewards) are several: the criminal procedure is very short, so that the offender is not very long under its pressure; he is aware of what kind of penalty he could expect if he agrees with shortened or simplified procedure; the penalty could be reduced or short custodial sentence could be replaced with dispensing with punishment; the accused doesn't have to pay the procedural costs; a measure of reform and prevention shouldn't be imposed; the legal consequences of the judicial decision shouldn't appear etc. What lies behind this is a desire to speed up the criminal procedure, reduce the delay in hearing cases, and help to ensure that the criminal cases are heard within a reasonable time.

Disadvantages of this kind of procedures are very important. The accused is obliged to refuse some human rights, required by Article 6 of the European Convention: the right to a public hearing, the right to oral hearing and immediacy etc.

CONCLUDING REMARKS

As there is a case in many European countries we are dealing with many problems of which the following are outstanding: the regulation of criminal law and criminal procedure law in order to exonerate the organs of detection, prosecution and trial; speeding up the criminal procedure with regard to the requirements of human rights; how to preserve the presumption of innocence; how to give a consideration to the rights of the victim at their maximum; how to provide the criminal procedure to be the confrontation of two equal parties; how to breach the defendant's rights and liberties as little as possible etc. One of the most serious conceptual problems which is being highlighted in this presentation is the simplification and acceleration of the criminal procedure.

The changes in our criminal procedure would be effective whether we could establish suitable and different forms of diversion, which have to be encouraged by the public prosecutor or the offender and to introduce some of simplified and accelerated (or abbreviated, shortened), special criminal procedures, which should be concluded with the conviction. Only small part of the criminal cases should go through all phases of the ordinary criminal procedure.

By my opinion we should prepare a basis for various types of simplified and summarised criminal procedures. The aim of the procedure of abbreviated judgement should be the elimination of the usual trial hearing by making it possible for final judgement to be given at an earlier point in the proceeding, probably during the intermediate phase or in a very short time after this phase. The procedure must be under the judicial control. It should be initiated by a request from the defendant or by the proposal of the public prosecutor. The accused must get a kind of reward as mentioned before. The aim of the second type of special criminal proceeding is, that it does not eliminate the trial hearing, but involves presenting the offender directly to the trial judge, bypassing the pre-trial phases. The best expression for this type of procedure is a summary (accelerate or direct) proceeding, because the offender and the public prosecutor avoid one or more pre-trial phases. The summary procedure is very similar to Italian "direct judgement" or German "accelerated procedure". However, the Italian main hearing is governed by the usual rules, the German one is different.[7] An oral rather than a written indictment may be used and a simplified procedure adopted to take evidence on the main hearing (the principle of orality is rarely used).

Last but not least we must point out that the criminal order procedure is one of the summary proceedings we already have. It is very controversial institute which is criticized. Critics argue that this kind of procedure is very dangerous, because it breaches several basic human rights and freedoms. In spite of that it is far more commonly used than other simplified or summarised procedures in several European countries.

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ENDNOTES

1 In recent years, a new way of thinking about how we should view and respond to crime has emerged and is beginning to make significant inroads into criminal justice policy and practice. Called restorative justice, it revolves around the ideas that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused; to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented... (Johnstone,2002:IX).

2 For better understanding mentioned social functions the criminal procedure has to follow, we must compare the presentation of M.Bošnjak (2004): Social Functions of Criminal Procedure. He points out that according to a wide-spread opinion, the criminal law has two basic social functions: to protect the society against crime and to guarantee protection of human rights of any persona accused of a criminal activity. The two functions are reflected in the criminal procedure as so called "crime control"and "due process model". In penal theory, criminal justice practitioners and public opinion, two basic streams of opinion exists. The first one argue for more efficient criminal justice, whereas the second one denies the preventative function of the criminal procedure, emphasizing instead the importance of a fair trial. The author tries to weigh both streams of opinion against each other and to highlight other important social functions of the criminal procedure and of the criminal law in general

3 The research project was under the tutorship of Institute of Criminology (Faculty of Law in Ljubljana),financed by the Ministry of Justice, by the Ministry of science, education and sports and by Governement Comission for Europan Matters, The head of this project was dr. Katja G. Šugman. The author of this article was a member of this research group.

4 This research project was under the tutorship of the Institute of Criminology of Faculty of Law in Ljubljana, headed by dr. Marko Bošnjak. The author of this article was a member of this research group. The project was financed by Ministry of Justice and by Ministry of science, education and sports.

5 For unknown reasons data from two local courts were unavailable).

6 It is very difficult to translate Slovenian word for "summary" procedure. The experts from different countries translate it as "accelerated or abbreviated" procedure. We shall use different translations, because we should see the differences between shortened procedure (one or more of the phases are omitted) and simplified procedure (one ore more of the phases are not omitted but only simplified).

7 A significant acceleration of the procedure can be achieved by proceeding to immediate trial or by shortening the period of summons (Huber,1996).

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