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Università di Urbino Carlo Bo

Materiali



REPORT OF THE ACADEMIC CONFERENCE “EFFECTIVE JUSTICE – INTERNATIONAL AND COMPARATIVE APPROACHES. CHALLENGES OF DIGITAL TRANSFORMATION”

Abstract

[Report of the Academic Conference “Effective justice – international and comparative approaches. Challenges of digital transformation”]. This paper reports the course of the international Conference concluding the project "Effective Justice - International and Comparative Approaches". The Conference accommodated 35 scholars from 25 various academic centers. The Conference was divided into 4 thematic panels, covering such topics as: organization of judicial systems, remote and digital justice, special and abbreviated procedures and evidence, systems of effective remedies. The Conference had an interdisciplinary approach, as it intertwined research results of various scientific disciplines. Besides purely legal context, in pursuit of desired changes, authors' analysis also included achievements of psychology, social services or IT. The recordings of the Conference can be found at the Effective Justice YouTube channel.

Key words:

effective justice, report, conference, digital transformation, international law

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Report of the Academic Conference “Effective justice – international and comparative approaches. Challenges of digital transformation”

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On May 8-9, 2024, the Faculty of Law and Administration of Adam Mickiewicz University in Poznań hosted an international scientific conference “Effective Justice - International and Comparative Approaches. Challenges of Digital Transformation,” organized within the framework of the Effective Justice - International and Comparative Approaches research platform. The conference program included 35 speeches by researchers gathered in 25 research centers from 11 countries. Within the main research centers participating in the project were Adam Mickiewicz University, Poznań and University of Bologna, among with University of Urbino, Sapienza University of Rome, Jaume I University, University of Warsaw, University of Szczecin, University of Trento and Tallinn University. The crowning event featured not only members of the project, but also invited guests and national researchers who were selected upon submission of abstracts. The organization of the conference was supported by the Ministry of Science and Higher Education under the Excellent Science II (Doskonała Nauka II) grant.

The conference began with the official part, during which the event was inaugurated by the Dean of the Faculty of Law and Administration of the Adam Mickiewicz, a representative of the District Bar Council in Poznań - Honorary Patron of the event and the founders of the project, Prof. UAM Barbara Janusz-Pohl and Prof. Daniele Vicoli from the University of Bologna, took the floor. The first lecture was given by special guest Prof. Stephen Thaman (Prof. Emeritus Saint Louis University, USA). In the opening lecture, Prof. Thaman drew attention to the problem of accurately determining what the efficiency

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of criminal proceedings is. Referring to the statistics of the efficiency of prosecution in the Soviet justice system, which ranked at 99.9%, he pointed out that from a purely formal point of view this represented extremely efficient system. However, he observed that the requirements of a fair trial dictate considering not only convictions of guilty persons, but also of innocent persons. Thus, the rate of the number of innocent persons convicted during the proceedings may also be an important point in the discussion of judicial efficiency. Prof. Thaman also juxtaposed the European systems, allowing appeals against acquittals, with the US system, in which acquittal is a final and non-appealable decision. Among the factors, he noted, is the fact that the state's position is privileged by allowing it to gather evidence through the entire apparatus of law enforcement agencies, carrying out the state's imperium.

The specifics of the length of proceedings, which take on a different dynamic from that present in Poland, are also of particular importance. Adversarial systems, modeled on the American model, are characterized by a much shorter phase of judicial proceedings. It is the pre-trial proceedings in these systems that are the longest, while proceedings tend to be condensed and short - in contrast to the Polish system. Also problematic is the use of abbreviated types of proceedings - including abbreviated or simplified pre-trial proceedings - which may not provide a sufficient evidentiary basis for a fair review of the proceedings.

Following Prof. Stephen Thaman's lecture, the official part ended, after which the main part of the conference began, which included six panels divided into two conference days. The first panel of the conference thematically included presentations by authors within the research panel "Special, Abbreviated Procedures and Evidence". Speeches were delivered on site, while Prof. Paweł Wilinski was the moderator of the panel. The session featured five speakers. The first to speak was Prof. Aleksandar Marsavelski of the University of Zagreb, whose paper dealt with the importance - mainly in terms of the future - of restorative justice within the Croatian judicial system. Although this mechanism is used in the juvenile field, the author also raised its important usefulness for the criminal justice system as a whole. Restorative justice can also play an important role at the enforcement stage. A key axis of consideration was the issue of more profiled education and training of practitioners in terms of the usefulness of mediation rather than the need to change the law. The second speech, delivered by Dr. Andrea Zampini, representing Sapienza University of Rome dealt with possible solutions to reduce the burden on the judiciary, and thus increase its systemic efficiency. The axis of consideration was the possibility of using a fine (*oblazione*) as a means of terminating proceedings. The speaker also presented the evolution of the historical role of the fine. In particular, after the so-called Cartabia reform, it was reshaped, so to speak, by extending its application to entire categories of criminal acts. Dr. Zampini also emphasized the role of the fine as an instrument of restorative justice. The floor was then taken by Prof. US Dr. Magdalena Kowalewska-Łukuć, who presented the role of mediation in criminal proceedings as an effective tool for implementing the demands of restorative justice. To this end, Polish regulations were compared with solutions used in Finland and Denmark. Issues related to the impact of mediation on the course of proceedings and its importance from the perspective of the victim of a crime were also raised. The fourth speech within the panel was given by Dr. Justyna Głębocka of the University of Warsaw. It covered an analysis of the model of pre-trial proceedings and its impact on court proceedings in comparative terms. For this purpose, German, Italian and French regulations were discussed and contrasted with

Polish code solutions. The speaker also presented the strengths and weaknesses of the adopted systemic solutions in each legal order. The last speaker in the first panel was Dr. Łukasz Cora from the University of Gdańsk. The speech concerned the issue of evidentiary actions in pre-trial proceedings. The axis of consideration was their defectiveness, particularly in terms of the principles of a fair trial. The main problem addressed in the speech was to determine what procedural sanction should be assigned to a given category of violations. An important stage of the speech was made not only the defectiveness of the action itself, but even of the entire evidentiary proceedings. During the official discussion, issues directly related to the speeches of the panelists were raised, such as the conditional delay of the initiation of criminal proceedings in connection with the use of mediation instruments or the problems of satisfying the sense of justice after the use of restorative justice mechanisms (on the basis of the speech of Prof. Marsavelski), how mediation can be popularized in Poland (in the context of the speech of Prof. US Dr. Kowalewska-Łukuć), or how the scientific research conducted can lead to an increase in the efficiency indicators of the justice system (on the basis of the lecture of Dr. Zampini).

The next session continued with a panel on “Special, Abbreviated Procedures and Evidence”, followed by the first part of the panel on “Organization of Judicial Systems”. This session was held remotely. Its moderator was Prof. UwB Wojciech Filipkowski. The first speaker within this part of the speeches was Prof. Chiara Gabrielli, representing University of Urbino “Carlo Bo”. During the speech, particular importance was given to the discontinuation of proceedings due to the low seriousness of the alleged act. Attention was drawn to the particular problem of the Italian criminal justice system, namely the excessive length of proceedings. In this context, discontinuance due to the low gravity of the act can be regarded as a special type of pre-trial procedure. Moreover, it is crucial to consider fundamental procedural principles in terms of the admissibility of this type of discontinuance of proceedings, and to properly balance the protection of individual rights with the need to ensure the efficiency of the administration of justice. The next speech concerned administrative efficiency versus the crime of abuse of power by a public official. It was prepared by Prof. Andrea Castaldo of the University of Salerno and read by Mattia Cutolo (University of Salerno) due to an emergency preventing the speaker from attending the conference. The speech focused on ways to improve public administration. In particular, it dealt with the relationship between the concept of public administration and efficiency along with the concept of abuse of power or position based on the Italian example. The third presentation was given by Dr. Christa Maria Madrid Boquin of the Jaume I University in Castellon, Spain. As part of her presentation, Dr. Madrid Boquin focused on the issue of effective consumer protection in Spanish civil procedure. To this end, she presented a distinction between individual and group actions, with a special focus on the role of precedent - the pilot ruling - for other individuals or groups of entities in similar procedural arrangements. This specific precedent is referred to as The Witness Procedure, which is based on an individual complaint. Although it is incompatible with group complaints, it can significantly serve to expedite proceedings in similar factual situations occurring in individual claims. Dr. Koidu Saia of Tallinn University and Tallinn University of Technology spoke next. Her presentation dealt with the interdisciplinary issue of effective support for children in so-called at-risk groups under the care of closed youth centers in Estonia. The key points discussed by Dr. Saia appeared to be the right to information, requiring that the child be informed about the situation and any related processes. In addition, it was also very important to include the children and their families

in the integration processes in a meaningful way, making it possible to stimulate motivation to continue them. In addition to a whole range of important factors, the inclusion of qualified people with different profiles in the processes should also be pointed out, allowing for a more comprehensive approach to the individualized situation of children. The last presentation was given by Lisa M. Rea of Restorative Justice International, an honorary patron of the project. This speaker presented the practical aspects of how associations work to promote restorative justice. The key issue was the impact and possibility of broad application of restorative justice mechanisms in the justice system. The main focus of the discussion was on the practice of countries in the common law tradition due to the geographic activities of Restorative Justice International.

The last panel of the first day of the conference dealt with issues related to the organization of judicial systems. The moderator of the panel was Prof. Hanna Kuczyńska of the Polish Academy of Sciences. The first to speak in the discussion was Prof. UAM Barbara Janusz-Pohl, whose speech concerned the perception of effectiveness. The main axis of consideration was the terminological differentiation between "effectiveness" and "efficiency", particularly through the prism of praxeologism in the T. Kotarbiński's approach. Analysis also covered the diverse goals of different conceptions of justice, i.e. formal and material, considering the directive of adequate criminal response. The next speaker was Prof. Daniele Vicoli of the University of Bologna, whose paper dealt with the need to balance the guarantee of proceedings while ensuring their efficiency. In particular, the guarantees under the Convention, related to the principle of due process, are important in this regard. Evaluation of the efficiency of proceedings should not be done from a purely formal point of view, but taking into account the economic analysis of the law. The third speaker in the session was Dr. Marcin Rau of Cardinal Stefan Wyszyński University in Warsaw, whose speech concerned the educational aspect in the pursuit of efficiency within the administration of justice. In his speech, Dr. Rau took a comparative approach to the issue of legal education, juxtaposing the Polish and Italian systems of university education. The axis of consideration was not only the higher education system for legal sciences itself, but also the challenges of practice in terms of the skills acquired by young law students during their legal studies. The continental model was compared with the innovative educational methods used at UC Berkeley School of Law. The fourth speech in the session was given by Tomas Manguel, a lecturer at the University of Buenos Aires and a PhD candidate at the University of Palermo. His speech covered the issue of universal jurisdiction and the principle of complementarity before the ICC. The considerations included the importance of international criminal law in the context of the Russian-Ukrainian war, as well as an analysis of the impact of so-called universal justice on the implementation of the demands of effective justice, using the example of Argentina. In addition, an important part of the analysis was devoted to the relationship between the principle of complementarity and universal justice. The last speech within the panel and on the first day of the conference was given by Michał Wawrzyńczak, a PhD candidate at Adam Mickiewicz University, Poznań and the University of Bologna. His speech covered the issue of evaluating justice systems through the prism of performance indicators. In his speech, the speaker presented selected proposals for such indicators, pointing out their specificity and usefulness from the perspective of the assumed purpose. Two model proposals for efficiency indicators formed the axis of consideration, as well as the assumptions of different types of justice: substantive and formal.

The second day of the conference also included three panels, with the mid-panel providing for speakers connecting remotely via MS Team. The first panel, composed of two parts, dealt with issues of so-called digital justice, and was moderated by Prof. Stephen Thaman, professor emeritus at St. Louis University. Dr. Marianna Biral of the University of Trento was the first speaker. Her presentation dealt with the digitalization of Italian judicial proceedings, and the main focus of the deliberations focused on the increased importance of digitalization through the so-called Cartabia reform. An important point in the deliberations was the issue of due process in the face of increased digitalization. The analysis also embraced a historical dimension, as a proper assessment of the course of the changes required evaluating it through the lens of previous reforms. The second speech was given by Prof. Arkadiusz Lach of the Nicolaus Copernicus University in Torun, who, together with Dr. Maja Klubinska (NCU), presented the results of their research project on the relationship between the efficiency and reliability of proceedings conducted through the means of remote communication. Finding a balance between the two conflicting values proved to be a key issue. Consideration of the specifics of remote proceedings from the point of view of the principle of due process also proved important. The third speaker was Prof. Kristjan Kask from Tallinn University. His interdisciplinary presentation covered issues of digitalization, psychology and law enforcement practice. The main axis of consideration was the relationship between types of questions - methods of interrogation - and their connection to digital training tools, such as avatars, and their impact on increasing the effectiveness of law enforcement interrogation activities. In particular, the distinction between the questioning of juvenile witnesses and adult witnesses is important, due to the different requirements at least in terms of the approach presented from a psychological point of view. The current state of research in the field of so-called investigative psychology in the context of psychological interrogation methods, such as cognitive interviewing (CI) or behavioral analysis (BAI), was also presented. The fourth speech was delivered by Dr. Federico Carmelo la Vattiatà from University of Catania. The speech dealt with the issue of the criminalization of risks associated with the use of artificial intelligence to commit criminal acts. The main axis of consideration was the dichotomy between the criminalization of an act resulting from the causality of human behavior in terms of Newtonian laws of physics and the possibility of applying the same principles to the evaluation of actions using artificial intelligence. The speech discusses not only issues related to the procedural use of AI and the mitigation of the resulting risks, but also specifics related to community law or the criminalization of AI at the level of community law.

The first part of the panel was followed by a discussion, in which issues related to the need to balance the rights related to the rights of victims of crime and the special circumstances of conducting remote interrogations were raised. Dr. Biral and Prof. Lach spoke in this discussion, pointing out, among other things, the need to reconcile procedures related to the digitization of criminal proceedings with constitutional standards and issues related to the participation of the victim in criminal proceedings. In addition, Prof. Kask pointed to Estonian regulations related to the protection of victims under the age of 14 by recording the interrogation, which avoids re-interrogation and re-victimization of the victim. Furthermore, the discussion covered the topic of interrogation through asking “right questions” raised by Prof. Kask and matters related to the Cartabia reform in the context of remote hearings.

The second part of the panel was moderated by Prof. UAM Barbara Janusz-Pohl and Prof. Daniele Vicoli. The fifth speech within the digital justice panel was given by Ewa Płocha, fellow at Cardinal Stefan Wyszyński University in Warsaw. She focused on the issue of using AI to assess the risk of recidivism using the COMPAS case study as an example. The speaker discussed the use of such systems to date - such as the OASys system in Estonia and the UK, the Cassandra system in Ukraine and, in particular, the COMPAS system in the United States. Particular attention was paid to the issue of realization of fundamental rights with the use of such risk assessment systems, and the need for implementation of such systems in their current form by the Polish and EU legislators was considered. The sixth presentation was given by Kaja Heckert, who focused on the ethical issues of using AI systems for justice purposes. The main axis of consideration was the current regulations at the community level as to the use of AI systems in the field of criminal justice. The analysis also covered the potential benefits of using AI in the sphere of case management and reducing delays in case recognition. However, the speaker's attention did not escape the potential risks in the sphere of judicial independence posed by the use of instruments independent of the human adjudicating the case. The next speaker was Marcin Galiński, fellow at the Jacob of Paradies Academy in Gorzów Wielkopolski. His presentation concerned the detection of deepfake technology in the evidentiary proceedings under the Code of Criminal Procedure. The speaker focused on the insufficiently researched, but increasingly important problem of using deepfake technology for the purposes of criminal proceedings. Not only the current regulations were analyzed, but also their usefulness for the elimination of this type of evidence. The possible necessity of amending the procedural law was also taken into account, formulating *de lege ferenda* postulates. The last speech within the first panel was given by Zaneta Özdemir, referring to the issue of non-verbal communication during remote trials. The principle of due process and its potential limitation by the use of digital instruments for the conduct of the trial was established as an important axis of consideration. In addition, the speaker focused on the analysis of the possibility of making a free evaluation of evidence by observing the behavior of the person being interrogated in comparison with the traditional interrogation in the courtroom, in particular in terms of obtaining a different result as a result of evaluating this activity.

Discussion was also held after this part of the conference. Among the issues discussed were the problems of how to detect evidence created through deepfake technology and, in general, the digital aspects of evidentiary proceedings. Issues related to the collection and detection of so-called digital traces by specialized law enforcement agencies were also the subject of discussion. Moreover, the relations between the principle of directness and the principle of free assessment of evidence was widely discussed.

The second panel of the second day of the conference was held remotely, and its moderator was Dr. Michał Peno of the University of Szczecin. It concerned issues of digital justice and effective remedies. The first speech of the session was given by Prof. Andrea Planchadell Gargallo of the Jaume I University in Castellon on the topic of access to justice through the example of the Valencian judicial model. Justiprop, the local legal aid system, was placed at the center of the discussion. An important role within this system is played by magistrates, whose office is intended to be more adapted to modern social requirements. Such a system includes both criminal and civil justice. The next speech was given by Dr. hab. Konrad Burdziak of the University of Szczecin. The presentation dealt with frontier issues, focusing on how to improve the quality of judicial activities through

the prism of modern psychology achievements. Efficiency from the point of view of the conditions for making rational decisions by the bodies of the proceedings became the axis of consideration. The key example in this regard was temporary detention. The third speech in the session was given by Dr. Katarzyna Zombory of the Central European Academy concerning the effective remedy for human rights violations in cultural terms from the perspective of international law. The speaker noted that the means of protecting cultural rights amount not only to instruments of international law, but also to local regulations. In this perspective, not only protective and enforcement provisions are important, but also providing an effective remedy. The place and importance of cultural rights in the human rights system was also analyzed. Another speech was given by Benedetta Arrighini, a PhD candidate at the Free University of Brussels, who assessed the relationship between ensuring the effectiveness of cooperation in criminal matters and the approximation of member states based on minimum standards. The EU directives on procedural rights and the Lisbon Treaty are important in this regard. The next speech in the session was given by Dr. Emanuele Toma of the Sapienza University of Rome, who presented the issue of procedural consequences of unlawful conduct of evidence. The axis of consideration concerned the rules of exclusion of evidence. In particular, these rules can be divided into constitutional and those arising from the requirements of a fair and just trial. It is crucial to determine whether and what remedy will be effective to secure potential violations of the law of evidence. In addition, an important issue is to find the appropriate consequences of such violations, not only in terms of procedural sanction, but even access to a remedy. The last speech in the panel was given by Rodrigo da Silva Brandalise, prosecutor and lecturer at the Fundação Escola Superior do Ministério Público Rio Grande do Sul. His presentation dealt with the issue of properly securing evidence from WhatsApp instant messaging for the purposes of legal proceedings. In this regard, it is crucial not only to carry out activities in a manner consistent with the art of investigation, but also to determine the procedural consequences of doing them correctly or incorrectly.

The last conference panel dealt with systems of effective remedies, moderated by Prof. Aleksandar Marsavelski. The first lecture concerned the issue of an effective remedy for the lengthiness of Polish criminal proceedings in the light of ECHR case law, delivered by Dr. Aleksandra Komar-Nalepa (UW) on behalf of Prof. UW Szymon Pawelec of the University of Warsaw. The presentation analyzed the relationship of Article 13 of the ECHR, which guarantees the right to an effective remedy, with the procedural situation resulting in a violation of Article 6(1) of the ECHR due to the excessive length of pending criminal proceedings. In this view, the *Kudła v. Poland* ruling was crucial, establishing a standard in the relevant scope for the analysis at hand. In particular, it is important to note that even the implementation of the judgment by introducing by law a complaint against the lengthiness of proceedings in the Court's view does not establish an effective remedy, nor does it mitigate the length of proceedings or the negative consequences of such. This was confirmed by the ruling in *Rutkowski v. Poland*. An analysis of ECHR case law leads to the conclusion that there are still systemic problems that require legislative intervention. The next speaker was Dr. Cocou Marius Mensah of the University of Maribor, who presented the issue of effective remedy before international judicial bodies. The considerations were situated in the reality of African countries submitting to the jurisprudence of the International Criminal Court. The reasons why these countries submit to the jurisdiction of the ICC were analyzed, and the most important cases pending before

this judicial body were presented. The analysis of the African Union's model law on universal jurisdiction, which was proposed in 2012, was also an important point of the lecture. The third speech in the panel was given by Dr. Stephen Terrett of the University of Warsaw. Main focus of the discussion was made on viewing judicial efficiency through the appropriate prism, i.e., determining whether a global or individual perspective is appropriate. One of the arguments made was the differentiation of the stages of criminal proceedings, particularly given the modified instructions related to the possibility of using the fact of silence against a person. Also important is the differentiation of the means of criminal response available to law enforcement agencies in the British judicial system. Furthermore, attention was also paid to the relationship between the principles of due process and consensual methods, also known as plea bargains. The fourth speech in the session was given by Dr. Aleksandra Komar-Nalepa of the University of Warsaw. It concerned the right to an effective remedy under Article 13 of the ECHR in relation to non-appealable evidentiary decisions in appellate proceedings. Special importance was given in this context to evidentiary preclusion before the appellate court. Assessment from the point of view of the principle of due process under Article 6(1) of the ECHR is also crucial. The need for appropriate instruments to guarantee the realization of the right to an effective remedy, meeting the requirements of Article 13 of the ECHR, is perceptible in this view.

The conference was concluded by Prof. UAM Barbara Janusz-Pohl. Most of the speeches will be published in the form of post-conference materials, by the Peter Lang publishing house. Recordings of the event on the Effective Justice channel, published on the YouTube platform, are also available.

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