Plans for Reform of the Criminal Investigation Procedure in Slovenia

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The European Convention on Human Rights and Fundamental Freedoms lays down the unbreachable principles to which the codes on criminal justice of member countries must adhere.

The text of article 6 of the Convention, as interpreted by the European Court of Human Rights, prescribes that the administrator of criminal justice must respect some basic demands. These are the guarantees that any person accused of having committed a crime: a) be judged by an impartial judge; b) be presumed innocent until the final decision; c) be in a position to exercise his defense in the best possible way; d) has his case decided in a reasonable time. In the quest for setting up a criminal justice system best responding to the said principles the law makers have already striven to reconcile the guarantees with the requirement of efficiency of the system.

Experts know that this is a very hard task and that all attempts that have been made never attained a satisfactory level.

The search for the best solution usually matches the alternative models, one called the inquisitorial and the other accusatorial or adversary. Both these models, if properly designed, are fully compatible with the tenets of a democratic state.

The choice to give preference to one or another should, therefore, be made taking into account other aspects such as circumstantial elements of socio-cultured character, legal tradition and the need of substantial equity and practicability.

Within the judicial organization of certain states, a singular role is that of the investigating judge. The investigating judge, who has a hybrid status being both judge and investigator, is part of the judicial landscape where criminal proceedings of the accusatorial type are found. At present, he is found, in particular, in France, Spain, Luxembourg, Belgium, the Netherlands, San Marino and Slovenia as well. The investigating judge does not try the perpetrators of offence but investigates the criminal cases coming before him and plays an active part in obtaining the evidence, while at the same time having significant coercive powers. Advocates of the model of the investigating judge consider that an investigating judge is better to investigate the inculpatory and exculpatory evidence than the police or the prosecutors' office.

Others note the difficulty of combining the role of investigator with that of impartial judge and propose the example of the investigating judge: this is a judge unconnected with the investigation who merely decides on coercive measures or settles disputes between parties. It is a concept which implies a gradual move towards a more accusatorial type of criminal procedure.

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The composition and the internal organization of the court system

The organization of the court system is provided for in the Courts Act.[30] The court system in Slovenia includes three instances. In the first instance, criminal cases may be tried either by regional courts or by district courts. In regional courts, cases involving criminal offences punishable by a fine or imprisonment for up to three years are heard by a single judge following the rules on summary proceedings. The most prominent features of summary proceedings are identical to those in regular proceedings, with the exception that summary proceedings do not contain the investigation phase. Instead, only certain investigative acts are conducted, when necessary.

District courts try cases involving criminal offences punishable by fifteen or more years of imprisonment before panels of five judges (two professional and three lay judges), and cases of criminal offences punishable by three to fifteen years of imprisonment before panels of three judges (one professional or presiding judge and two lay judges). The same applies to special cases of criminal offences committed by the press or other mass media.

In the second instance cases are heard by higher courts (appellate courts), where a panel of three professional judges decides on appeals against decisions of the regional and district courts.

The organization of the investigation and criminal procedure

The initiation of the criminal procedure depends on the type of criminal offence in question. Most criminal offences are presented *ex officio*, which means that only the state prosecutor may initiate the procedure. However, if the state prosecutor finds that there are no grounds to prosecute for a criminal offence *ex officio,* he or she has to instruct the injured party within eight days that the party may initiate or continue the prosecution by himself or herself.

Slovenian criminal procedure consists of four phases: the pre-trial procedure, the filing of the charges (indictment), the trial and the judicial review procedures (appeal against judgments of the court of first instance and the so-called extraordinary remedies). The pre-trial procedure consists of two parts: preliminary proceedings (with the police as the *dominus litis*) and the investigation phase as the predominantly judicial phase, with the investigating judge in charge.

The criminal procedure usually starts with the filling in of a report for an offence to the police or a state prosecutor. After the police investigation (usually informal interviews with the suspect and witnesses, the investigation of the scene of the crime, the examination of the real evidence, search of the premises, etc.) the matter is transferred to the state prosecutor. The state prosecutor decides whether a well-grounded suspicion exists to call for a formal investigation (in cases of serious or complex criminal offences) or to file the so-called direct indictment (without the investigation phase).

[30] O.J. 19-779/94 in 45-2161/95.

In case the investigation judge starts the investigation, the investigation is conducted with the purpose of gathering evidence for the prosecutor to decide whether to file an indictment or drop the case. The investigating judge, who is bound by the inquisitorial maxim, conducts the investigation at his or her own initiative. In the investigation phase, the investigating judge has most of the investigative powers, although he or she may transfer these to the police for the execution of certain investigative acts. The state prosecutor does not have any investigative powers himself of herself, but he or she may request that the police conduct certain investigative acts.

The investigation phase being concluded, the file is submitted to the state prosecutor who may decide either to file an indictment or drop the case. After filing the indictment, the defendant or the trial judge may file an objection to the charging document if in his or her view there are no grounds to proceed. The objection is then decided by a panel of three judges (not including the trial judge). When the indictment becomes final, the case is submitted to trial.

The trial is organized mostly in the accusatorial manner; however, the court is bound to seek the truth. The trial closes after the pronouncement of the judgment, which can be a finding of guilt, acquittal or rejection of the charge. If there is no appeal, the judgment becomes final fifteen days after the judgment has been served on the accused in regular proceedings and eight days after the judgment in summary proceedings.

The appeal may be filed by the accused, certain of his or her relatives, the state prosecutor and the injured party. The appeal is decided by the court of second instance. The final judgment may also be reviewed, usually by the Supreme Court, through extraordinary legal remedies.

The investigation in preliminary proceedings is primarily conducted by the police; therefore, the police collect most of the evidence. Some of the police investigative acts may be conducted on their own initiative (e.g. investigation of the scene of the crime, identity check, fingerprinting). However, the investigation judge, whose activity is otherwise rather limited in this phase, has to issue written orders for the police to conduct certain investigative acts encroaching upon the rights and freedom of citizens (e.g. telephone tapping and search of the premises).

The character of the pre-trial phase

The character of the pre-trial phase depends on the investigation phase in question. During the entire investigation (in broader terms), the investigative powers are monopolized by law enforcement authorities. Citizens have no investigative powers themselves, which is a clear reflection of the strict inquisitorial principle.

In preliminary proceedings the police may act as an autonomous investigating agent when carrying out the so-called informal investigative acts. In this sense, the preliminary proceedings are organized on the basis of the inquisitorial principle. For all formal investigative acts (e.g. search of the premises and telephone tapping) a written order of the investigating judge is necessary, which could be viewed as an accusatorial element limiting the investigative powers

of the police. Whenever suspects are deprived of their liberty, they are to be informed of their rights.

The investigation phase is also organized on the basis of the inquisitorial principle, since the investigating judge has the task of establishing completely and according to the truth the facts relevant for issuing a lawful decision (the inquisitorial maxim). The investigation phase also involves some accusatorial elements. For example, the defendant is presumed innocent, he or she may exercise all of his or her rights, he or she may attend all of the investigative acts conducted by the investigating judge, and may suggest that certain investigative acts be conducted. The whole process of deciding on pre-trial detention is organized in an adversarial manner, with the obligatory presence of the defense lawyer. There are strict rules providing the legal conditions under which the formal investigative acts may be conducted. In case the police do not adhere to those rules, the evidence thus gathered is subject to exclusion.

The end of pre-trial stage

The stage of trial in the narrow sense begins with the prosecutor's submission of the indictment to the court. In the wider sense, the pre-trial stage is deemed to have been concluded when the indictment filed by the competent prosecutor becomes final. After that moment the trial court is seized and preparations for the trial begin.

The role of the investigating judge

The investigating judge has a dual function. First he or she exercises the investigative function in which he or she collects the evidence for the prosecutor to decide whether to file an indictment or drop the case. The investigating judge therefore has many *ex officio* investigative powers. In the course of his of her investigative duties, the investigating judge interrogates offenders, examines the witnesses and obtains other evidence. The second function, one which has been expanding of late, is the protection of the rights and liberties of the defendant, since more and more of the powers of the investigating judge also concern the issuing of orders (e.g. for searches of the premises and telephone tapping) on the proposal of the state prosecutor. The investigating judge also decides on pre-trial detention. The investigating judge may never be the trial judge in the same case.

The investigating judge orders pre-trial detention upon the request of the state prosecutor.[31] The hearing is organized in an adversarial manner.

Plans for reform

The Slovenian Code of Criminal Procedure has been frequently criticized by academics and legal practitioners. There is no coherent model of the procedure. Its basic idea of separation between the preliminary proceedings and the court proceedings, designed during 1960's, is obviously an obsolete one. Major political and social changes also occurred in the period of the so-called transition:

[31] The general provision is article 20(1) of the Constitution and a more specific provision is article 201(1) of the Code of Criminal Procedure.

the mentality of all the institutions involved in criminal proceedings changed, there is much more serious crime, including organized crime, and a once stable social system has been falling apart. On the other hand, the code has been amended much too frequently because of the Constitutional Court's otherwise welcome liberal decisions, but partial amendments only tore apart what was left of the once coherent model. The system is also inefficient mostly when dealing with serious criminal offences. For this reason, in 2001 the Ministry of Justice financed a research project with the task of designing a new model of criminal procedure. The model research concluded at the end of 2003 and the new, much more adversarial model is now under discussion.

In the last coherent model of the Code of Criminal Procedure (from 1967), the police was the *dominus litis* of the procedure, and the state prosecutor played a relatively insignificant role in the preliminary phase of the proceedings. In the investigation phase it was the investigating judge who was in charge. With the last ten years of change, the relationship and therefore the balance among those authorities began to change. The state prosecutor is slowly becoming more important and should become even more active since he or she is getting more and more powers, giving the state prosecutor the position of the leading authority in the procedure. With the proposed changes to the role of the state prosecutor, who had had most of the investigative authorizations at his or her own initiative *ex officio* before, the role of the investigating judge would also change immensely.

The investigating judge is partly losing the role of the investigator and is gaining the function of protecting the rights and liberties of the defendant, since more and more of his or her powers also concern the issuing of orders for e.g. searches of the premises and the tapping of telephones on the state prosecutor's proposal. He or she is therefore becoming the analogue to the justice of freedoms. These two functions have been severely criticized since it is not possible that the one, who is responsible for the investigation in a certain phase of the procedure (again a manifestation of the inquisitorial maxim) may act as an impartial judge in the same proceedings. The institution of the investigating judge is therefore one of the serious weak points of the procedure in Slovenia. It either does not investigate properly, since it becomes the impartial judge, or it does not function as the guarantor of rights and liberties of citizens. The latter is much more frequently the case, since it is not possible to start from the neutral point, when (later on) one has to be active in the investigation. Also the attitude of the investigating judges, who sometimes view themselves as the helping hand of the prosecutors, is contradictory to the role of the "pure" judiciary.

In the adversary system the only judge intervening in the procedure is the trial judge. He does not take part in the investigations and, with limited exceptions, plays a passive role. The evidence collected by the defense counsel and prosecutor are presented by them.

However, even defense attorneys often claim that by losing the institution of the investigating judge, poor defendants would often lose the only authority that would collect evidence in favor of the accused. We could therefore say that, as much as its role is schizophrenic, the answer to the question of abolishing the institution itself is not simple. In a way, the investigating judge still corrects the perhaps too enthusiastic police investigation, by collecting evidence also for the

defense (in search of the truth) and by suggestions to drop the case when there are no grounds to prosecute.

The introduction of a preliminary procedure controlled by a judge is one possibility to form the investigative phase of the criminal procedure. However, it is not cogent to fulfill the demands of a criminal procedure respecting human rights and the rule of law by splitting the investigative competence between the prosecutor and the investigating judge. On the other hand, the introduction of a preliminary procedure controlled by a judge is not far from the legal traditions of Continental Europe. The legal system of Austria, until recently, contained a similar procedure. Most of the Swiss cantons follow the system of splitting competencies. In the French legal order, the principle of the preliminary procedure controlled by judges has been the tradition since the Napoleonic reforms at the beginning of the 19th century. Apart from the legal procedure in France, the criminal legal systems of Luxembourg and Belgium also accept the investigating judge. In the Netherlands, this system can be found in an extenuated form.

A procedure can be made, fully harmonized with human rights and rule of law requirements that transfers investigative competencies from the investigative judge to the public prosecutor. In such model of the criminal procedure there is no preliminary judicial investigative phase. In this regard, the German Criminal Procedure Code can serve as model.

The German Criminal Procedure Code obliges the prosecutors' office to investigate the facts *ex officio* as soon as it learns of the suspicions of criminal act with the intent of determining whether a perpetrator should be indicted. Judicial investigations might take place only on the basis of this indictment. For the purpose of the indictment, the Code charges the prosecution office to undertake the necessary investigations – either by itself, or by the law enforcement agencies. The preliminary judge, who is ordinarily located in the district court, is acting only on the request of the prosecutor, if the law foresees an expressed judicial decision or if the prosecution office considers a judicial investigative action as necessary. Such preliminary decisions are reserved for the judiciary, which empowers the prosecution office and the police to intervene in the freedom of movement, the protection of private property, the protection of individual integrity and the individual secrecy of mail and telecommunication. Here the law demands a judicial decision. Beyond this, the prosecutors' office can ask for judicial investigations as far as the prosecutor considers these judicial actions necessary. As the prosecutors' office is ordinarily allowed to investigate the facts through its own faculties, judicial investigations are exceptionally undertaken in circumstances such as:

1. There is danger of the loss of evidence. In this case, witnesses and court experts are interviewed to gain a judicial protocol that can be used in the main trial as a written document.

2. A judicial inspection of evidence, places and persons is required.

3. To gain a more veracious statement of a witness or court expert, especially under oath.

Such judicial investigations are a rare exception in criminal investigation practice.

By examining the Slovenian Criminal Procedure Code, one notes that it contains the following procedural phases:

- Firstly, the police investigations are devoted to collecting information. In this phase, the probable witnesses are designated and are interviewed by the law enforcement agencies for information purposes only. This procedural phase leads to the result that the collected information and witness statements give the factual reason for a suspicion and enable the police authorities to charge the defendant officially.

- Secondly, the judicial investigations, which are started by a reasoned prosecutorial request formed on the basis of information and facts collected by the law enforcement agencies. The request has to demonstrate which facts presume a criminal act and why the judicial investigation is necessary.

- The filling of the charges (indictment).

- The judicial investigations then lead to the main trial before the court, if the defendant is indicted. In this phase of proceeding the witnesses and the court experts are interviewed for a second time.

The German criminal procedure code reduces these parts of the proceeding to two main procedures, namely:

- The proceedings preparatory phase which is in the hands of the prosecutor. In this preparatory phase, all the evidence which is necessary for the indictment is collected.

- The main trial before the court, which is exclusively directed by the judge.

The German procedure seems more effective because it is shorter. The conciseness is only achievable by ensuring that the evidence collected by the police and by the prosecution office on the one hand, and the evidence raised by the judiciary on the other are considered equally valid. Thus, an indictment based exclusively on evidence collected by the police is possible.

However, the more formal procedure in Slovenia could probably be more appropriate to the demands of the rule of law because the judiciary directs the preliminary procedure. If this procedure is not changed, the efficiency deficits must also be overcome. The French criminal procedural system is the starting point of the Slovenian procedural model directed by the investigating judge. However, the Slovenian model has withdrawn from this classical system. The differences become clear when the third phase of the criminal procedure, the main trial, is taken into account. The French main trial is mostly based on the results which were gained in the judicially directed preliminary phase. The French main trial uses these results. Therefore, the French main trial is designed for the use of written documents and protocol statements of the witnesses or experts. The witnesses are ordinarily not interviewed directly in the main court. Their statements, which the investigative judge has recorded in the preliminary phase of the trial, are read out and serve as evidence. In general, the French main trials are more concise than the Slovenian trials in which the taking of evidence is formally repeated. Of course, the French proceedings are more concise than the

German proceedings before the main court. In the German main trial, the judge accepts the evidence for the first time, and this takes time.

If we take the legal situation of Slovenia into account, we can assess that the gathering of evidence is unnecessarily repeated in the criminal proceeding. This is an important gap in effectiveness.

Apart from these aspects, the existing legal provisions of the 1994 Criminal Procedure Code produce too many actors. There is the investigating judge in the second investigative phase in whose hands the investigations are given and who is charging the law enforcement agencies. There is the police authority that is accountable in the first phase of the proceeding and is executing the judge's orders in the second part of the proceeding. The judicial accountability does not exclude that the law enforcement agencies act *ex officio* looking for further evidence during the judicial investigation. Furthermore, there is the prosecution office that, following Article 160 a of the Criminal Procedure Code, is directing the investigations and is determining their scope. However, this office is not able to intervene directly in the judicial investigations. There is a need for a conductor in this orchestra of players. The prosecution office might be this conductor. Article 160.a of the Criminal Procedure Code gives the prosecutor the power to influence the police work. Their powers are indeed not well delineated. If following article 169 par. 1 of the Criminal Procedure Code the investigating judge decides whether to open the formal investigation, he is quite free and independent to direct it as he sees fit. Currently, the prosecutor is restricted to motions and requests (article 168, par. 1 of the Criminal Procedure Code). He does not have legal authority to direct the activities of the investigating judge.

The proceedings need co-ordination, if the players in the crucial second phase – which provides the basis for an indictment – are acting independently of each other. As we have seen, the legal possibilities to co-ordinate are extremely weak.

The German criminal procedure code is clearer. It gives the prosecutors' office a clear mandate of leadership and establishes its pre-eminence in the investigation. The law enforcement is legally restricted to providing assistance to the prosecutor. Its investigative authority is limited to cases on-the-spot and in which there is a danger of lost evidence. The law expresses the dependence of police authorities by ordering that the law enforcement agencies to which police authorities belong be unconditionally obliged to follow the prosecutor's directions.

Under the legal pre-conditions in Slovenia, the necessary co-ordination between the charged authorities demands an agreement. An agreement implies the consensual will of the participants and is achieved on the basis of negotiations. In addition to this, the question of virtual accountability is linked to this legal situation. The German law concentrates accountability on the prosecutor and does not give any opportunity to evade this responsibility. The prosecutors are very aware of this situation. A critical public reminds it to them often enough. The Slovenian Code allows gaps in the accountability of the investigators, even if all the players in the field of investigations are willing to co-ordinate. So it is a simple question of who is responsible if the attempts to co-ordinate the investigation fail. The code does not recognize the collective of the participants in the co-ordination process as a legal counterpart. Because of the gaps in the legal system and depending on the particular case and also political exigency,

the players in the field try to evade responsibility. This means that the proceedings remain without a direction and without concepts or structures. The proceedings dissolve. The danger is at hand that perpetrators are escaping their just punishment.

The procedure foreseen by the 1994 Criminal Procedure Code is cumbersome and has in many ways too many formalized legal complications. It is not effective. Especially, clear ties leading to accountability are missing.

I advocate a model of pre-trial procedure in which the key player is the state prosecutor, who carries out the procedure in order to be able to decide on whether to institute a criminal prosecution before the courts. The police are not independent but completely or to a large extent subordinate to the prosecution body. The judge appears primarily as judge guarantor, i.e., a judge who protects people's rights and freedoms and only exceptionally intervenes in order to protect evidence, but never *ex officio*, only on the proposal of the prosecution or defence. The rights of the defence are systematically built into the procedure. The pre-trial procedure is the only phase of the preliminary procedure, since after an intermediate, preliminary or control phase, which is in the hands of the courts, it leads either to court proceedings or ends, either because the conditions are not met for further proceeding or through redirection into one of the forms of alternative reaction to the commission of a crime.

For the most part countries that reformed their criminal proceedings in the last quarter of the 20th century opted for such a type of pre-trial procedure. They normally ended (or very much limited) investigation as a typical institute of a mixed (but actually inquisitorial) procedure and attempted to introduce a number of adversarial elements, so that the criminal proceedings would be organised as a contest. It is a difficult search for new balances in criminal proceedings. On the one hand, the breakthrough of adversarial procedures is a fact, but on the other, their weak points cannot be ignored. The transplanting of a foreign model did not seem acceptable, also because of their own legal culture and traditions, so reforms tended towards the introduction of a modified (reformed) adversarial procedure.

It is essential for this type of procedure that procedural motions are relatively clear and pure. The state (public) prosecutor is pronounced in his role of prosecution body, since the pre-trial procedure is conceived as "his" procedure; it is supposed to serve primarily his needs, i.e., the collection of data for deciding whether to prosecute. Since the prosecution office is a state body, irrespective of the branch of power into which it is classified and what its function in the procedure is, it is required to be objective.[32]

The state prosecutor conducts the pre-trial procedure either alone or through the subordinate (court) police; there are often certain (more important) tasks retained only for him, which he has no authority to transfer to the police.

The connection between the prosecution body and the court police is functional and not organizational. The court police are linked to the prosecution office

[32] This requirement can theoretically be set at various levels, but it would be in conflict with the prosecutor's procedural role for it to be set too high: normally, e.g., it is required that he ensure the protection of evidence he comes across in his work that may be of benefit to the defence, but more rarely he is bound to autonomous activity towards seeking evidence to the benefit of the defence.

in the exercise of their function, otherwise remaining a constituent part of the police. Other police forces do not have the authorities of the court police, except for performing urgent activities (which is understood narrowly). The prosecutor must always have available the necessary (agreed) number of trained members of the court police and it cannot be conceived that the senior management of the police could withdraw them for carrying out other duties.

In this model of pre-trial procedure the state prosecutor also controls the police.

The judge appears in this type of pre-trial procedure in two roles:[33] primary, i.e., in the role of judge – guarantor or judge of freedoms; and secondary, i.e., in the role of a judge who may exceptionally protect evidence. The first is relatively familiar in Slovenia and means that the judge decides on the permissibility of acts which (sufficiently deeply) encroach on people's rights and freedoms, primarily the accused but may also partially be of other participants in the procedure. In principle, any police authority in investigating a suspected crime can mean an encroachment on people's rights, at least the general freedom of behavior and the right to privacy, and many other rights more deeply and over a very wide spectrum,[34] as far as the most serious encroachments which signify a profound encroachment on the right to personal liberty. The use of the most serious of these[35] may only be permitted by a judge, under conditions specified in law, and this represents his role as guarantor.

The other task of a judge in the pre-trial procedure is protecting evidence. It is a fact that a situation can arise in which evidence cannot be taken at trial, and must therefore be taken in advance, thus protected.[36] It is an exception, which for this reason must be used narrowly.[37] Such protection of evidence can be proposed by both sides, but a judge may never carry it out *ex officio*.[38] The scheme is in principle adversarial: the parties being guided by their own interests, are active, while the court is passive: more so if it must grant a motion and less so if it may actively judge whether conditions are met for protecting evidence. There are therefore sufficient possibilities for a balanced arrangement of this question. This further means that the court does not participate in the prosecution and does not operate on the side of the criminal charge. In brief, it is a court activity that, in terms of content, is familiar in the Slovenian procedure today.

I propose the following changes: the introduction of an adversarial (accusatorial) procedure and a mixed system of prosecution (with the principle of expediency

[33] It must be stressed here that this is normally two different judges, since the functions are in conflict and if they were not separated, there would be similar difficulties as those with which we are confronted today with the investigating judge.

[34] Only as an example, let me mention encroachment on physical integrity (taking tissue for later analysis), privacy at a higher level (house search), assets (temporary seizure of objects, material benefits or property suspected of having been obtained illegally), freedom of movement (specifying a place of residence or a ban on approaching a person or object), personal liberty (custody) etc.

[35] In the distinction, which is crucial, it is necessary in particular carefully to weigh the interest of protecting people's rights and freedoms, but also a suitably effective procedure.

[36] Attention must be drawn here that it will not normally be the same person (judge), since the two functions are different in nature.

[37] Theory draws attention here that a wide interpretation of the need to protect evidence could change this procedure into a kind of concealed investigation, which would be in conflict with the conceived arrangement.

[38] There is not actually such a risk in this procedure, since it is almost impossible for a situation to arise in which a judge would himself consider that some evidence should be protected – a judge namely is entirely unaware of such evidence.

for less serious offences), greater application of the adversarial principle with all important questions, the abolition of (judicial) investigation, amended starting points for ordinary and extraordinary means and the introduction of a special judge who would decide on the enforcement of penal sanctions. Major changes would occur mainly in the pre-trial procedure, which would be in the hands of the state prosecutor and (court) police, on personal (custody) and material (house search) restrictive measures, on which a judge guarantor would decide in an adversarial hearing. The judge guarantor would no longer perform investigatory activities. The state prosecutor would have available great scope for rejecting or abandoning a prosecution, but such a procedure would not include plea bargaining.[39] The main phase of such a model of procedure would be a classical trial, which would be organized as a contest of equals before a passive court.

Such a fairly radical change to the mixed criminal procedure would certainly be in accordance with the requirements for greater democratization of the procedure and, at the same time, would also bring greater transparency and internal concordance of the criminal procedure. In adopting an accusatorial model of procedure, probably not all institutions known in modern accusatorial procedures would enter into consideration, e.g., the aforementioned plea bargaining. It is necessary to bear in mind that more than two hundred years of tradition of mixed procedures in continental Europe have brought many good solutions, which should be retained in such a changed criminal procedure. The need for justice and a search for the truth (irrespective of how such a notion is defined) are certainly part of the continental (though less so the Anglo-Saxon) legal culture and arrangement of the criminal procedure as a contest between two parties would certainly be alien to this culture.

Investigation is conceived in a procedure before a district court as the first and generally compulsory phase of a normal criminal procedure. An investigation is typical and with its main protagonist (investigating judge) certainly the most characteristic institution of the inquisitorial procedure, which mixed procedures have taken over. The basic condition for it is a higher level of probability (well-founded suspicion that a particular person has committed a criminal offence).

A decision on reform of the criminal procedure might become, together with a rearrangement of the pre-trial procedure, a decision on ending investigation as a special phase of the pre-trial procedure. Almost all countries that have radically changed the arrangement of their criminal procedure in recent decades have given up investigation. So many theoretical and practical problems and contradictions have accumulated in it that, viewed from today's perspective, it is very difficult to defend.

Summary

The actual distribution of competence in the criminal proceedings of Slovenia is not satisfactory at all. The splitting of the whole proceeding into at least three phases is not a constitutional demand. The distribution of tasks between police, prosecution office and judiciary offers too many players the opportunity to act or to omit the necessary actions. And in addition to this, the procedure law gives

[39] Such plea bargaining could be allowed, if the entire procedure was under the control of the courts, which would also finally decide on whether to accept a guilty plea or not and whether the accused is aware of the significance of pleading guilty.

only small legal remedies to appeal if the judge omits the necessary actions. This situation does not favor effectiveness, but rather slows the process down. In the case that all players are acting, the legal tools to co-ordinate and direct are not foreseen. The present system promotes the procedural ineffectiveness even further. In addition to this, there are no legal objectives which prevent the necessary changes.

If the system is reformed, one or another legal system might be used as a model. In any case, the German system in which the investigative power is concentrated in the prosecution office is not the worst. Compared to the existing system in Slovenia, it is clearly more effective. If the present system in Slovenia is changed, at least the following aspects should be considered. The reform has to reduce the number of procedural phases. This result should be achieved by the elimination of the investigating judge. The procedure must be reduced to the constitutional requirements. Where human rights and freedoms in a criminal procedure action are in question, there and only there, a judicial decision is indispensable. Reducing the judicial powers will strengthen the investigative authority of the prosecutor and enable him to direct, steer and design the proceeding from the very beginning. In any case, the reform must clarify the relations between the police and the prosecutors' office. It has to stress the pre-eminence of the prosecutor.