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Verifying proceedings as a selection mechanism in criminal proceedings

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SUMMARY

The condition for the commencement of the criminal procedural activity by the prosecution authorities is the establishment of the factual basis for initiating criminal proceedings in the form of a reasonable suspicion that an offence has been committed (Article 303 of the Polish Code of Criminal Procedure). It constitutes a conceptual boundary distinguishing the pre-investigative activity of the authority from the trial proceedings. The assessment of whether the factual basis for initiating criminal proceedings has been met is the responsibility of the authorities responsible for prosecuting crimes and must be made immediately after obtaining an impulse containing information about the criminal offence.

In light of the above, regardless of the circumstances, the authority must undertake a particularised examination of the information obtained in order to determine whether the condition set out in Art. 303 was met. However, not in every case the investigative authority is able to unequivocally determine, immediately upon obtaining the information, whether the conditions for the commencement of criminal proceedings were fulfilled. This situation results in ambiguity of the authorities in determining whether criminal proceedings should be initiated or abandoned.

For such situations, the legislator foresees a solution in accordance with the rules set out in Art. 307, referred to as verifying proceedings. Their task is to supplement or verify the data resulting from submitted notification or to verify the authority's own information from other sources. As intended by the legislator, deriving from the *in fine* clause of Article 307 §1, the purpose of the proceeding is to lead to a conclusive decision on whether preparatory proceedings should be instituted.

The fundamental aim of this dissertation is to create an in-depth analysis of the verifying proceedings, having its normative reflection in Art. 307, and presenting it as a selection mechanism.

The dissertation seeks to verify the fact that the currently applicable legal regulation of the verifying proceedings does not provide for a fully correct mechanism for selecting information as it does not provide an effective guarantee of the principle of legalism and fails to protect the interests of its participants.

The doctoral dissertation consists of six chapters.

The first chapter is devoted to the origins of the institution of verifying proceedings in the context of historical conditions.

The second chapter contains reflections focused on the aims, functions and types of the verifying proceedings in the light of the Polish Code of Criminal Procedure of 1997. It contains an analysis of the legal nature of the verifying proceedings, identification of their functions, and considerations related to the heterogeneity of the verifying proceedings.

The third chapter is devoted to the considerations regarding the basis for initiation of the verifying proceedings and its relationship to the factual basis for initiation of the criminal proceedings. This section concentrates on the analysis of the sources of the initial report of an offence and their influence on shaping the factual basis for the initiation of the verifying proceedings.

The fourth chapter discusses the participants in the verifying proceedings. The main participants in the verifying proceedings are subjected to detailed consideration, i.e. the body authorised to conduct the verifying proceedings and the authority reporting the crime. Consideration has also been given to the potential injured party and its position in the conduct of the verifying proceedings.

The fifth chapter contains an analysis of the scope of the verifying proceedings. It presents proposals for the division of verifying proceedings and emphasises the two-stage mechanism of verifying proceedings. A central part of the reflection is aimed at the issue of undertaking investigative and operational activities and their relationship to the ongoing verifying proceedings.

The sixth chapter is concerned with the topic of duration and methods of the conclusion of the verifying proceedings. The issue related to the thirty-day time limit, as indicated in the first sentence of Article 307§1 has been comprehensively analysed. The existing doctrinal differences were pointed out as to the nature of this time limit and consequences of exceeding it.

The final part of the dissertation contains a summary of the key findings presented throughout the preceding chapters, as well as proposals *de lege ferenda*.