

Conclusions of the summary report on the lawfulness of indictment
— Conclusions, proposals —

Conclusions

In 2012, a jurisprudence-analysing working group was established to examine the quashing practice of criminal courts. The working group's findings and proposals aimed at the judiciary and strengthened the Curia's role in that field.

The jurisprudence-analysing working group on the lawfulness of indictment, set up in 2013, concentrated not on the courts, but rather on the prosecution services and their role in criminal proceedings. The working group was given the task of examining the interpretation and application of the term "lawful indictment".

Some issues related to the interpretation of lawful indictment have already been raised during the examination of the criminal courts' quashing practice.

In certain cases, the first and second instance courts had a disagreement over what qualifies as lawful indictment and over the interpretation of the legal consequences of the lack of lawful indictment. The distinction between the termination of proceedings due to the lack of lawful indictment and the termination of proceedings due to the lack of criminal offence also gave rise to dogmatic problems.

At present, the lack of lawful indictment constitutes an absolute ground for quashing the impugned court decision. Section 384, point 11 of Act no. XXXIII of 1896 had enumerated the lack of lawful indictment among the procedural grounds for nullity, no relevant provisions had been contained in the subsequent codes of criminal procedure, and it was only in 2006 that the lack of lawful indictment was placed, once again, among the absolute grounds for quashing. It is probable that the 1896 codification of the rules on the lawfulness of indictment aimed at laying down the rule of law principles of criminal proceedings, while the 2006 codification sought to strengthen the adequacy of the bills of indictment.

The jurisprudence-analysing working group on the criminal courts' quashing practice revealed that the courts have a critical approach to acquittals and the lawfulness of indictment.

The examination of the topic of the lawfulness of indictment is of relevance not only for legal scholars, judges and prosecutors, but for other legal professionals and the public as well. The courts should be bound by the prosecution's indictment and criminal court decisions should be true and fair. The public has the same legitimate expectations.

Society also expects the prosecution services to press charges that are based on the factual background of the criminal offence prosecuted in an appropriate manner.

The question arises what margin for manoeuvre is available to the court regarding the clarification and complementation of the bill of indictment.

The content of the bill of indictment is of paramount importance for the court, however, some of its elements may be criticised in other respects (protection of personality rights).

The working group took the above lessons into account for its examination and had also regard to the already started process of the Code of Criminal Procedure's recodification.

Findings and proposals

The bill of indictment, as a legal guarantee for the accused, lays down a framework for the taking of evidence and for the content of the court's decision.

Indictment efficiency in itself cannot be considered a negative category. On the other hand, the unfoundedness of indictment, as it may be the result of an insufficient criminal investigation, should be regarded as an unwanted phenomenon.

The conduct of court proceedings by the head of the judicial panel hearing the case is a suitable procedural means to ensure a fair trial and inquest into objective truth. This is demonstrated by the fact that the unwritten principle of the taking of evidence is identical in both the inquisitorial and adversarial systems: at least two of the three main actors of court proceedings (the prosecution, the defence and the court) are given the task of providing evidence.

The prosecution has to provide evidence actively even at the trial, and should not rely on the court to being obliged to thoroughly and completely establish the facts.

The court has to pay particular attention to revealing the exculpatory and mitigating circumstances for the accused, since the taking of evidence aims not only at verifying the correctness of the bill of indictment, but also at ascertaining that no elements other than the ones included in the bill of indictment are to be taken into consideration.

If the prosecution and the court both play an active role in the taking of evidence, then the conduct of proceedings by the head of panel can meet the requirement of fair trial and enable the discovery of objective truth, without the need to modify the rules of criminal procedure on the basis of the adversarial model.

The prosecution's task to discover the truth, the prosecutors' constitutional position and the guaranteeing function of indictment exclude, for instance, the modification and extension of the bill of indictment for "tactical" reasons.

The Hungarian rules of criminal procedure are essentially based on a remedial model, but the possibility of modifying the bill of indictment is much narrower than the possibility of modifying the court's decision by the appellate court.

In 2006, the legislator explicitly defined the term of lawful indictment and made a distinction between "unlawful" indictment and "deficient" indictment.

Comparative legal studies involving Germany, England, Italy, the Czech Republic, Portugal and Bulgaria

There is a strong trend in the countries examined that it is the prosecution and not the court that is responsible for "correcting" the deficiencies of the bill of indictment.

The comparative studies show that the distinction made by the Hungarian legislator between

unlawful and deficient indictment is rather artificial.

In the countries concerned, no such distinction is made (except for Bulgaria). However, they may differentiate between severe and minor deficiencies and may attach different legal consequences to them.

In some of the legal systems examined, court proceedings are preceded by an “intermediate procedure” (which also exists in the Hungarian rules of procedure, but in a rudimentary form): the prosecution’s act of pressing charges cannot be subject to appeal. The accused may form observations and raise objections concerning the bill of indictment, may request evidence taking, and the court may, *ex officio*, take further evidence to clarify the case’s factual background. The prosecution’s indictment is therefore subject to the court’s control.

There is remarkable distinction in the German legal literature between the “limiting” function and the “informative” function of the bill of indictment. On the basis of its limiting function, the bill of indictment sets the limits of the examination of the case’s facts. The deficiencies of the limiting function lead to the rejection of the prosecution’s request to open the court’s “main proceedings”, on the other hand, the shortcomings of the informative function entail no such consequences, as they basically do not undermine the effectiveness of court proceedings.