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Introduction

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Daniele Vicoli

Introduction

The following book is the culmination of the collaborative efforts of dedicated researchers within the Effective Justice International and Comparative Approaches Platform, which officially launched its activities in December 2021. This platform was led by Prof. UAM Dr. hab. Barbara Janusz-Pohl from the Faculty of Law and Administration at Adam Mickiewicz University and Prof. Daniele Vicoli from the Department of Legal Sciences at the University of Bologna.

The platform was dedicated to advancing scientific knowledge through a wide range of activities, including hosting international seminars and spearheading initiatives aimed at consolidating research efforts in the field of effectiveness, particularly in criminal proceedings at large. With an emphasis on comparative and international analysis, the platform attracted a diverse and global community of researchers. This resulted in a robust network of over 40 individuals representing more than 20 scientific centers, fostering both permanent and periodic cooperation. The platform's activities can be followed at www.effective-justice.com.

This book is divided into two parts. The first focuses on organisation of judicial systems, while the second on digital justice. The topics discussed in both parts are related to the effectiveness of criminal proceedings, procedural actions, and selected legal institutions. The chapters address a range of issues, including national and international themes, particularly those relevant to the links with the European Convention on Human Rights and the European Union law.

The first part is introduced by Barbara Janusz-Pohl's chapter *Perceptions of the Effectiveness and Its Interdisciplinary Approach – Keynotes*. The author explores the concept of effectiveness from various perspectives. Starting from a semantic point of view, the essay provides a comprehensive examination of how effectiveness is perceived in economic sciences and psychology, drawing on selected philosophical concepts such as the praxeological perception of action by Tadeusz Kotarbiński and the frame of constitutive rules as elaborated by John Searle and Stanisław Czepita. Against this background it is outlined that effectiveness is perceived as a complex notion in legal sciences, especially in the field of procedural law. Regarding criminal proceedings, it is suggested that the concept of effectiveness must be analyzed on the basis of the goals set for the given activities.

In the two chapters that follow the crucial role of European institutions in the pursuit of effectiveness in the field of criminal proceedings is highlighted.

Based on the assumption that approximation (i.e. harmonization) represents an instrument for effective cooperation between EU Member States, *Effectiveness through Approximation in the EU Area of Freedom Security and Justice* by Benedetta Arrighini analyses the degree of harmonization of national criminal procedures in the light of selected relevant Directives. The author concludes that, at this stage, the process of achieving full effectiveness through approximation still needs to be completed, as challenges persist in balancing national sovereignty with EU-wide integration and (especially) with the rights of the accused.

The Impact of The Rule of Law Backslide on Revision of the Competences of The Court of Justice of the European Union on the Matter of Member States' Domestic Jurisprudence by Jacek Szukdlarek explores the European Court of Justice's case-law regarding the organization of the judiciary in the Member States. Firstly, the attention is focused on the guarantees of independence and impartiality that, according to the European Court of Justice, must inspire the rules concerning the appointment and composition of judicial bodies, the length of service, and the grounds for abstention, rejection, and dismissal of its members. Then, looking in particular at the Polish system, three fields are taken into consideration: the disciplinary measures upon judges, the appointment of judges, and judicial cooperation in criminal matters. The paper aims to highlight some degree of incoherence and inconsistency of the European Court of Justice's approach when it comes to the protection of fundamental rights and the rule of law.

The two following chapters are focused on the Spanish judicial system.

Organizational Efficiency in the Spanish Judicial Power: New Trends by Ana Beltrán Montoliu examines the reforms enacted within the Justice 2030 framework, and in particular the laws on Organizational Efficiency (LOE), Procedural Efficiency (LPE), and Digital Efficiency (LDE). The author emphasizes the aims pursued by the legislator: to restructure court models, enhance specialization, and increase the use of technology in order to improve access and communication within the judiciary.

In Access to Justice and Proximity Justice in Spain: The Valencian Model by Andrea Planchadell-Gargallo the efficiency of the judicial system is considered from the perspective of the right to access to justice. From this point of view, there is a need to adapt the territorial organization of the courts with a closer approach to citizens. In this regard, the author mentions the *Justiprop* service, i.e., a legal aid service set up in the Valencian Community, whose aim is to ensure citizens' access to justice, both in terms of knowing their rights and effectively exercising them.

Within the chapter entitled *Model of Pre-Trial Proceedings and Its Influence on the Judicial Stage of Criminal Proceedings: A Comparative Analysis of European Legal Systems* the analysis of the relationship between organizational aspects

(understood in a broad sense) and effectiveness of criminal proceedings is carried out on the basis of a comparative approach. In particular, Justyna Glebocka gives an overview of four European systems: French, German, Italian, and Polish. The starting point is that although they share the same or similar values, European legislations uphold different pre-trial proceedings models, which fundamentally affect the shape of the overall judicial proceedings. In particular, the choice impacts the effectiveness of the entire criminal procedure, understood as the demand for a quick, efficient, but also fair (truthful and respectful of the guarantee rights of the parties and participants) adjudication of the criminal case. On the basis of this assumption, the author discusses the most important features of the pre-trial investigation models in force in the considered countries, indicating their objectives, the scope of evidentiary activities, and, consequently, their impact on the stage of court proceedings.

The chapter by Konrad Burdziak *Applying the Achievements of 20th and 21st-Century Psychology to the Organisation of Justice. Remarks on the Improvement of Judicial Activity* deals with the influence of fields of knowledge other than law – in this case, psychology – on evaluating and redesigning a given legislation to make it work better and more effectively. The case study is represented by the regulation of pre-trial detention in the Polish system. The author analyses the relationship between the rationality of decisions and the provisions regulating them. According to the results of a legal-dogmatic method, the work gives a negative answer to whether the Polish legislator has created conditions for courts to make rational decisions regarding the possibility and justification of applying the institution of pre-trial detention in a given case. Consequently, several solutions – based on the achievements of modern psychology – are proposed to improve the degree of rationality of judicial decisions in the field of pre-trial detention.

In the last chapter of the first part *Challenging Legal Education in Pursuit of Judicial Efficiency: A Comparative Analysis of Poland and Italy* the value of effectiveness is considered from the perspective of legal education. As the value of legal education has a direct impact on the level of efficiency of the justice system, it is crucial that teaching methods keep pace with the contemporary legal landscape. Based on this assumption, Marcin Rau carries out a comparative analysis of legal education systems in Poland and Italy against the innovative model at Berkeley Law School in the United States and points to a significant disconnect between the traditional academic approach and the evolving needs of the legal profession, particularly in the digital age. Considering the successful experience of Berkeley's integrated teaching approach, reforms are proposed to adapt legal education to the expectations of new generations, incorporating interactive and technologically advanced methods.

The second part of the book is dedicated to digital justice. The topic is explored from different perspectives.

In the chapter *The European Union's Strategy on Digitalisation of Judicial Cooperation in Criminal Matters: Towards a More Effective Justice in Cross-Border Scenarios?* by Alejandro Hernández López, the focus is on European policies on new technologies applied to judicial cooperation between EU Member States. The author analyses the content of the Proposal for a Regulation COM (2021) 759 and the Proposal for a Directive COM (2021) 760, which have subsequently led to the adoption of Regulation 2023/2844/EU. Among the issues addressed, communication by digital means and the use of videoconferencing in cross-border criminal proceedings are outlined as of paramount importance.

The topic of videoconferencing is also addressed in the following chapter. *The Italian Route towards Digitalisation of Criminal Proceedings. The Latest Developments in the Field of Remote Justice* by Marianna Biral analyzes the significant increase in the use of video links for participation in procedural acts and hearings provided by the Italian legislator in 2022. After an overview of the milestones in the evolution of the meaning and scope of remote justice within the realm of the Italian criminal procedure, the author highlights potentialities and drawbacks of the recent legislative developments. She also offers some insights on making the regulation of the waiver of physical participation of parties and witnesses more guarantee-oriented.

The chapter by Ewa Aleksandra Płocha (*The Impact of AI-based Recidivism Risk Assessment Instruments on Human Decision-Making in Criminal Justice: COMPAS Case Study in the Context of Polish and European Union Law*) addresses a topic of paramount importance: the use of Artificial Intelligence systems as an assistive tool on human decision-making in criminal cases and, in the most radical scenario, as a substitute for the judge. In this regard, a significant development is represented by the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) software, which has been used as a recidivism risk assessment instrument in the United States. After describing COMPAS and the approach of American jurisprudence and scholars towards it, the author examines the possibility of using such an algorithm under Polish and EU legal regulations. The analysis shows that COMPAS does not meet the constitutional and EU standards regarding human rights ('AI Act'). In the author's view, such a conclusion does not lead to an outright and irrefutable rejection of AI systems. Algorithmic tools for assessing the risk of recidivism are still being improved, and perhaps in the future, they will become trustworthy (legal, ethical, and robust), and the EU will change its attitude toward them. However, in the author's opinion, using

such tools is not recommended at the moment: the risk of violating fundamental human rights and freedoms is too high.

In the last chapter, entitled *Systematic Literature Review of Associations Between Question Type and Adult Witnesses' Accuracy: A Step in Creating a Digital Solution to Train Law Enforcement Personnel's Investigative Interviewing Skills* Kristjan Kask, Annegrete Palu, Mari-Liis Tohvelmann, and Pekka Santtila address the topic of witness interviewing skills on the part of the law enforcement personnel. The essay moves from the recognition of a lack. While the issue of interviewing techniques is broadly acknowledged and discussed both in literature and among legal practitioners, attention is paid almost exclusively to challenges arising when child witnesses are to be examined. The authors' proposition is to contribute both theoretical and practical to the debate on interviewing techniques for adult witnesses. In this regard, they illustrate the results of an extensive review of the relevant literature and provide valuable insights and suggestions to develop solutions – also in the form of dedicated software and other digital systems – to train law enforcement agencies.