



Zbigniew Mierzejewski

PRINCIPLE OF INSTANCES
OF CRIMINAL PROCEEDINGS

SUMMARY

Doctoral dissertation prepared in
Chair of Criminal Procedures and Forensics,
Faculty of Law and Administration, University of Łódź
under the supervision of
dr hab. Dariusz Świecki, prof. UŁ

Łódź 2021

The principle of instances of court proceedings is commonly accepted as one of the fundamental rights that provides the party of a trial a guarantee of reviewing a judgment issued by a court of the first instance by a higher-level, organisationally separate court.

This principle also concerns issues related to the system of justice and organization of first and second instance courts and the status of judges, as well as models of appeal proceedings.

In the opinion of the Constitutional Tribunal, the substantive right to two-instance court proceedings is closely related to the constitutional provisions concerning the court proceeding the case and means that the court of each instance should fulfil the conditions of impartiality and independence.

Thus the principle of instances of court proceedings is enshrined in the Constitution of the Republic of Poland [Articles 78, 176 (1)] and international agreements, such as the Convention for the Protection of Human Rights and Fundamental Freedoms [Article 2 (1,2) of Protocol 7] and the International Covenant on Civil and Political Rights [Article 14 (5)], and due to its particular importance in defining the model of appeal control, it can be considered as one of the fundamental principles of the criminal procedure.

Even though the issue concerning the principle of instances of court proceedings in criminal procedure has been the subject of numerous scientific articles, no monographic study covering the broader aspect of the research has been published so far.

The main objective of the dissertation is to answer the question of whether the statutory regulations provided under the Polish Criminal Procedure Code allow a real and effective implementation of the principle of instances, and meet the criteria set out in the Polish Constitution and international agreements.

The dissertation consists of the introduction, eight chapters and a conclusion.

The first chapter covers a number of theoretical aspects referring to the meaning of the concept of “legal principle” and provides an introduction to further considerations.

In particular, an attempt was made to present various theories regarding principles of law, to point out the criteria for its separation from other legal norms, which should reflect important values resulting from the system of law, and functions implemented in the practice of applying the law. In the legal theory, various criteria are presented for determining the boundary between legal rules and legal principles. Theorists enter the

debate from different starting points, offering a particular consideration or type of argument in favour of a preferred account. According to some theorists the difference between rules and principles is a logical distinction, whereas other claims that rules and principles are of the same nature, but the distinction depends on the intensity and importance of the values they contain. For that reason, the problem of the distinction between rules and principles can be recognized as an example of “essentially contested concepts” theory. Therefore, the analysis aimed not to focus on indicating the arguments in favour of one of the presented theories, but on applying them in the interpretation of the law.

The first chapter covers also the conceptual apparatus that functions in relation to legal principles. The principle of instances performs multiple functions including correctional, stimulating, precedent-setting, unifying legal interpretation, signalling-didactic, and instruction-related.

The second chapter presents the development of the principle of instances from the very beginnings of statehood to the present day. The presentation of the appellate control models, which were in force in the past, aimed to show the advantages and disadvantages of specific solutions.

The exclusion or excessive limitation of the possibility of reviewing a judgment issued by a court of the first instance, as well as the excessive expansion of the number of control instances, led to a crisis of confidence in the judicial system and the rule of law. Multiplicity of court instances may, but does not necessarily have to, translate into prolonged proceedings time. Crucial in this respect seems to be the choice by the lawmaker of a model of appellate remedies.

The current model of appellate proceedings takes into account historical experience and can be described as a mixed model with a predominance of appellate features.

Proceedings before the court of the second instance ceased to fulfil only the control function, and took the form of control and examination. However, contrary to the classic appellate model, the court of second instance does not hear the case again, but controls it within the limits of the appeal or, in cases permitted by law, beyond those limits.

The third chapter of the dissertation presents the principle of instances of court proceedings in criminal procedure in a comparative perspective and ratified international agreements, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the Charter of Fundamental Rights of the European Union.

The French, Italian and German legal systems were selected for the comparative analysis.

One of the selection criteria was their influence on the Polish criminal procedure and the variety of appeal control models in force therein.

In none of the analysed legal systems, contrary to the Polish legal system, the principle of instances is not directly contained in the constitution, although, e.g. in Italy, its validity is inferred by the Italian doctrine indirectly from other constitutional norms. In spite of this, the principle of instances is commonly recognized as one of the guiding principles of the criminal proceedings.

The presentation of regulations of the principle of instances contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union, also takes into account the international jurisprudence. According to the Constitutional Tribunal, decisions of international courts should also be taken into account by domestic courts and other law enforcement bodies.

The subject of chapter four is to determine the meaning and the application of the principle of instances in the jurisprudence of the Constitutional Tribunal by analysing all the fundamental judgments of this body that referred directly or indirectly to said principle. The results of this analysis were then confronted with the opinions of the doctrine, which often formulated critical comments on individual decisions of the Constitutional Tribunal. The analysis aimed to formulate general conclusions resulting from the jurisprudence of the Constitutional Tribunal, allowing for a proper interpretation and application of the principle of instances. It is worth pointing out that the Constitutional Tribunal applies the principle of instances not only to first-instance judgments concerning the main subject of the proceedings, but also to specific, incidental issues concerning the fundamental rights and freedoms guaranteed by the Polish Constitution, which may be considered a *sui generis* case pursuant to Article 45 (1). The other conclusion of the analysis carried out in chapter four shows that it would not be possible to completely exclude the right to appeal to a court of the second instance in the main subject of the proceedings. On the other hand, the Constitutional Tribunal allows the possibility of introducing statutory limitations on the principle of instances, which must meet the criteria of proportionality set out in Article 31 (3) of the Polish Constitution and may not lead to an excessive restriction or exclusion of the constitutionally guaranteed fundamental right. For that reason, it is to be established to what extent the statutory simplifications and restrictions can involve consequences for limitations to procedural fundamental rights.

Chapter five presents the application of the principle of instances in administrative and civil proceedings. It also presents the evolution of the understanding of the principle of instances in the jurisprudence of the Supreme Court in criminal cases due to the change of the appellate procedure model from review to appeal.

In the analysed procedures, as well as in the criminal procedure, it is observed a preference for the substantive nature of appeal proceedings and a limitation of the possibility of issuing a cassation judgment.

The sixth chapter describes the relationships between the principle of instances and other procedural principles, i.e. the principle of material truth, the principle of the right to defence and the principle of free assessment of evidence.

Despite the fact that said principles have been the subject of numerous scientific studies, the change of the appellate procedure model prompts a new approach to their mutual influence.

This applies in particular to determining the conditional priority relationship in the event of a possible conflict of the analysed procedural principles as well as in the process of interpreting legal norms.

The main objective of the principle of instances is to eliminate any possible mistakes that may occur in the criminal proceedings before the court of the first instance. Therefore, in the seventh and eighth chapter, selected aspects of the principle of instances in appeal and complaint proceedings implementation are discussed.

The assumed aim is not to present a complete analysis of both ordinary remedies, but to focus on those issues whose interpretation may lead to a disproportionate and unjustified limitation in the implementation of the principle of instances.

This particularly applies to issues related to the term and form of the application for a written justification of the judgment, the term and form of the appeal and the requirement that the appeal against the judgment of the district court must be submitted only by professional attorney-at-law. It should also be pointed out the role of appeal charges as an element limiting the scope of appellate control and the scope of adjudication of the court of the second instance, indicating that in appeal models of control their function is basically reduced to the organisational and informative.

The analysis of the principle of instances essentially takes into account the judgments of the Constitutional Tribunal, international courts and selected judgments of the Polish Supreme Court. The judgments of administrative and common courts of law were referred to a limited extent, only as an illustration of the views presented.

The analysis of the principle of instances essentially takes into account the judgments of the Constitutional Tribunal, international courts and selected judgments of the Polish Supreme Court. The judgments of administrative and common courts of law were referred to a limited extent, only as an illustration of the views presented.

In the doctoral dissertation various research methods were used, i.e. historical, comparative, logical-linguistic, and legal argumentation.

The conclusion of the doctoral dissertation presents the results of the conducted research, as well as proposals for the interpretation of regulations that may unjustifiably restrict the implementation of the principle of instances and *de lege ferenda* postulates.

29.04.2021.

Zbigniew Stępień