UNIVERSITY OF MISKOLC
FACULTY OF LAW
FERENC DEÁK DOCTORATE SCHOOL

dr. Krisztina Farkas

THE POSSIBILITIES OF THE ACCELERATION OF THE PROCEDURE IN THE GERMAN, SWISS AND ITALIAN CRIMINAL JUSTICE

Thesis of the PhD Dissertation

MISKOLC

2016

I. Summary of the task of the research, the aims of the research

In recent decades the European judicial systems have been characterized by a constant fight against the increasing burdensome due to a significant growth in the volume of crime and a dramatic change in the structure thereof. The statement that the judiciary is overloaded has become a byword. The judicial systems have not been able to cope with the monumental tasks so a criminal procedure can be dragged for many years beginning from the investigation to the final decision. Due to the growing number of crimes, their becoming more complicated, furthermore due to their criminalisation based on the obligations deriving from EU membership and other international documents, moreover as a result of challenges due to the rapid technical development and the changing social needs, the judicial systems have not been able to cope with the monumental tasks so a criminal procedure can be dragged for many years beginning from the investigation to the final decision.

The fact that the judicial authorities are overloaded, which leads to prolonged proceedings, is a day to day problem in Hungary and in most European states as well For this reason efforts to accelerate proceedings have received more attention and the acceleration of the proceedings is one of the central subjects of researches across Europe. In Hungary many papers and monographs have dealt with this topic, in addition, several researches have treated the Hungarian regulation in detail.

The Hungarian criminal substantive and procedural law suggest numerous solutions to speed up criminal proceedings, but unfortunately, these instruments fail to attain the aims of the legislator in the everyday jurisdictional practice. Having regard to this, it is necessary to examine the current practice thoroughly, to modify it and to search for new ways in the course of which the application and utilization of foreign jurisdictional practices may also come into view. The research is especially topical because the codification of the criminal procedure code is in process, which can provide a good opportunity to set in the gained knowledge and experience in the Hungarian criminal procedure law.

The most obvious solution would be the extension of the conditions of the staff and resources but none of the countries – including Hungary – follow this way, instead the simplified and accelerated forms of proceedings and the modifications of the existent legal instruments are preferred. The common problems the European judicial systems face and the solutions they develop in response open up the possibility of the approximation of the judicial systems in Europe, which provides a good opportunity to apply similar or even the same

solutions in national criminal proceedings. During the examination of the problem comparative law has an outstanding role and it can be regarded as one of the most effective tools.

Based on the above I have proponed as the main task of my research the examination of the solutions that can make the regulation of the Hungarian criminal proceeding regarding its acceleration more effective, and also drawing up recommendations. My intention was to reach that goal by studying the foreign solutions in the framework of the comparative analysis. I have chosen as the object of my research the tools of the acceleration in the German, Swiss and Italian criminal justice. My choice was motivated on the one hand by the fact that these three countries belong to the continental legal system and as a result, they have common roots and contain several similar and comparable features. On the other hand when choosing those three countries my decision was influenced by other reasons as well.

The *German* criminal proceeding is a well known area of law which is willingly and often researched by Hungarian criminal lawyers. There is a close interrelationship between the two legal systems, many Hungarian legal institutions have German roots. However, the previous researches related to certain legal institutions of the German procedure, but they failed to provide their comprehensive, full examination from the perspective of the acceleration and there has been a lack of their synthesizing and systemizing interpretation.

The *Swiss* criminal proceeding can be considered an unimportant research field of the Hungarian jurisprudence. The reason for it is the cantonal criminal procedural regulation, which existed until 1st January 2011. The legislator terminated it with the enactment of the unified Federal Criminal Procedure Code, which came into force in 2011. Among the goals of the new Code – beside the main goal, namely the unification – appears the acceleration of the proceeding as well. That is why it is justified to examine the solutions to speed up proceedings, dealing with their former cantonal antecedent as well.

The examination of the *Italian* criminal proceeding is justifiable for several reasons. On the one hand it is a less important research field of the Hungarian lawyers and therefore only its main features are well-known for them. On the other hand the dragging of the procedures is one of the most urgent problems of the Italian justice, which has not been solved up today. To eliminate this problem the searching for new ways, the elaboration of alternative solutions of the traditional criminal justice can be observed, the revelation and analysis of which I find necessary.

As the secondary aim of the research I intended to provide a comprehensive examination of the provisions related to this topic and characteristic of the above mentioned

three justice systems, and to introduce a field unknown for the Hungarian criminal lawyers. At the same time I wanted to arouse the interest of both theoreticians and practitioners.

In the first chapter as a starting point, I briefly drew up the basic characteristics of the three criminal systems.

Afterwards, I reviewed the reasons for acceleration, the causes and the consequences of prolonging criminal proceedings in each country. Several studies and broad researches can be found in the German scientific literature related to the examined area. However, I considered it more important to approach the topic from the aspect of the consequences of dragging the proceedings which is provided by the German and Italian legislation.

In the third chapter I revealed the regulations for accelerating proceeding from a theoretical point of view, which means the presentation of the emergence of the principle of legality–opportunity and the constitutional basis of the acceleration of criminal proceedings as well as its recognition as a fundamental principle of criminal proceedings.

The main part of the thesis was concerned with the concrete legal institutions in the three states. I believe that this structure made it possible for me to conduct a comparative analysis of the topic.

After these detailed analyses I synthesized the various solutions provided to speed up criminal proceedings in the three countries in a separate chapter, in which I explored the connections, the similarities and differences. During the comparison of the regulations and solutions to accelerate criminal proceeding I also examined the Hungarian context, which made it possible for me to compare the found results with the Hungarian solutions and finally, in the last chapter of the thesis to draw conclusions and formulate *de lege ferenda* proposals for the Hungarian legislator and the law-applying bodies.

II. Research methods

The research methods were defined by the aim of the thesis as my thesis is of a comparative, complex nature. These methods can be considered traditionally used research methods in criminal procedure law. Due to the complexity of the topic it was necessary to use diverse methods not only in each chapter but also within the individual chapters. The dominance of the descriptive, comparative methods made it possible to realise the aim of the research.

I used the various statutory instruments of different levels of the individual legal systems and some international documents as *primary sources.* In compliance with the requirement of functional comparative law I examined the provisions of the criminal procedure law as the starting point but I also analysed the related regulations of constitutional law, criminal law, and in some cases criminal penitentiary law as well.

As *secondary sources* I used a wide range of scientific papers, text-books, commentaries, relevant documents of the national and international organisations basically in foreign languages, which I the Hungarian bibliography and results of researches to.

During the research all the time my starting points was the *theoretical* approach, after that I dealt with the *practical* questions, and finally I tried to realise the *synthesis* of theory and practise. I examined the concrete legal institutions applying unified criteria, namely after a short introduction of the historical background I presented the theoretical basis, after that I introduced the positive regulations, the problems arising in practise and the judicial practice. During this examination the *historical* approach was indispensable. The elaboration of the normative resources was possible using the *dogmatic-normative* method, including interpretation on the grammatical, logical, historical and systematic level. In addition, I also used the method of *functionalism,* because I had to examine not only the legal institution, but also the role it plays or it s intended to play in the individual legal system. In the course of the interpretation of definitions unfamiliar to the Hungarian terminology I had to use the *hermeneutic* approach. The interpretation of the problems, the introduction of the advantages/disadvantages of legal instruments were possible using the *critical* method. To evaluate the efficiency of the application of the solutions in the practice, I invoked both national also international *statistical* data. In the course of the research and the comparison of the examined proceedings by applying the principle of *tertium comparationis* I tried to find the common features and aspects of the legal systems which have a common basis but also several differences. And based on those findings I introduced the similarities and differences with the help of tables.

III. Summary of the results of the research and its utilization

Summary of the results of the research

In recent decades the overload of the judicial authorities leading to prolonged proceedings has been a central problem still unsolved in the European states. For this reason the acceleration of proceedings has become one of the key aims of high priority of legal policies across Europe. Some reform statutes serving this aim have appeared, furthermore the acceleration has become one of the central objects of researches. It seems to be a vain hope that judicial system could treat the case load effectively by the self-limitation of legislation or by the extension of resources and staff. It follows from this that the problem of the acceleration of proceedings should be resolved by other means.

In the dissertation I investigated the question of the acceleration of the criminal proceedings in three European – namely in the German, Swiss and Italian – judicial systems to transmit the experience obtained as the result of the research to the Hungarian legislator and the law-applier. The three criminal procedures proved to be very different concerning the applied solutions to the problem in spite of the common roots.

The research findings can be summarised as follows:

1. As a starting point I found it important to study how important the issue of the prolonged proceedings in each examined countries was, which factors have led to the delays, which possibilities they have to remedy the injury as well, because the systematization of the findings and the evaluation of the individual solutions was possible only in this way.

The issue has a different importance in the investigated states. In Germany the overload of the judicial bodies and the dragging of the proceeding can be considered a general phenomenon, so it is among the most disputed questions. The situation is not as alarming in the practise as it could be assumed based on the claims of the critics, because the subjective feeling of the overload cannot be verified by objective data. Compared to other European countries it can be stated that there is no cause for alarm concerning the general term of the proceedings. The problem appears principally in the field of economic criminal law. However, the dragging of the proceedings is not a primary question in Switzerland that is why the researches just touch upon the topic, so merely fragmentary data are available concerning

the dragging of the proceedings. In contrast to these two countries the Italian criminal justice is in crisis, the dragging of the proceedings can be considered troublesome, so it is not surprising that the accelerations of the proceedings is one of the key questions. The literature does not emphasize the explorations of the reasons but it concentrates on the search for the solutions, accordingly I found just fragmentary data regarding the reasons for the dragging.

The reasons leading to the dragging of the proceedings make up a heterogeneous, complex system. A common feature and at the same time a basic characteristics in all the three countries is the stable number of crimes, though there is a slightly declining tendency, the increasing number of criminal provisions, and the lack of resources of staff of the judicial bodies. In addition, there are further causes leading to the delay, which are typical of but very different in each state. The reasons interact and they comprise a multiple system that is why it is a generally accepted view that a comprehensive examination of the whole system is necessary to solve the problem.

It is a very important issue to secure legal remedy to prevent the delay of proceedings and to ensure remedy for damages caused by delay that have already occurred. When doing so firstly it shall be cleared if there is a delay, if it can be considered excessively long, after that if the delay is stated further damage shall be prevented, and the redress of the occurred damage shall be provided. In Hungary this approach can be considered unimportant However in the German and Italian criminal justice the party who suffered some pecuniary or non pecuniary damages as a result of the violation of the reasonable time requirement shall have right to a remedy.

2. It is inevitable to investigate the theoretical bases of the legal institutions of acceleration. Concerning the topic of the research it means the introduction of the following: the enforcement of the principle of legality–opportunity, the constitutional bases of the acceleration, furthermore the introduction of its recognition as the basic principle of the criminal proceeding. All the three systems are based on the principle of legality, which is enforced as an exception to the general rule in the German and Italian justice, so in terms of the acceleration, legal institutions based on the enforcement of the principle of opportunity have a remarkable influence both on the burdensome of the judicial bodies and on the term of the proceedings. In Germany there are tried and tested instruments based on the opportunity, the Swiss Federal Code has acknowledged the "principle of moderate opportunity" taking important steps towards the extension of the principle of opportunity. The Italian legislator

insists strictly on the enforcement of the legality, which can be evaluated as a paradox of the system and also as an obstacle to acceleration.

The principle of legality is declared only by the Italian Constitution. The German and the Swiss legislator enforce both the principle of legality and opportunity through the provisions laid down in the criminal procedure code. The requirement that criminal proceedings should be dealt with within a reasonable time is present in each examined criminal system. While the principle of legality is explicitly declared as a basic principle both in the Swiss Constitution and in the Swiss federal Criminal Procedure Code, the Italian Constitution acknowledges the principle as well, and both the German and the Italian criminal procedure code recognize it as one of the principles of the criminal procedure but without explicit statutory provisions. Apart from this difference the common feature is that the enforcement of the principle is ensured directly by several provisions of all the three criminal procedure codes.

3. The central part of the dissertation is the examination of the individual legal institutions for accelerating proceedings, and in this part I introduced the various solutions of the individual legal institutions applied in each country. I established that the general characteristics of the tools for accelerating proceedings is that they appear firstly in the general provisions aiming to accelerate proceedings, secondly in the legal institutions deriving from the principle of opportunity, thirdly in the special proceedings aiming at acceleration. The German and Swiss solutions follow this way but the Italian criminal justice does not facilitate the enforcement of the principle of opportunity, but it contains several other special solutions which cannot be classified in the above described groups.

3.1. The tools deriving from the principle of the opportunity cover basically three legal instruments in Germany, namely the two forms of the diversion: the simple diversion to arrange less serious crimes, i.e. the case can be dropped without conditions (i.e. the non conditional disposal); and the intervener diversion to dispose to arrange medium offences as well (i.e. the conditional disposal), and the German type of mediation, i.e. the offender-victim settlement, which is discussed in the next subsection. Both types of diversion have a significant role in the practice.

There are similar legal institutions in Switzerland. Both criminal substantive law and the procedural law provide possibilities for solutions within the scope of opportunity. Based on the so-called “principle of moderate opportunity” acknowledged in criminal procedure law

the legislator makes the termination of the procedure possible – and at the same time obligatory – in different cases of the waiver of the criminal claim in the field of substantive law. These provisions are of little importance in practice although they provide a broad discretionary power for the law-applier. In the field of the procedural law in Switzerland it is possible to redress the harm caused by the crime in case of criminal offences subject to private prosecution by means of the legal institution called arrangement, which I present in the next sub-chapter, under the title mediation.

3.2. In terms of mediation diverse, heterogeneous regulations can be observed in the examined states. Mediation in its original sense, i.e. a proceeding between the offender and the victim to resolve their conflict by a mediation process is possible only in the German criminal justice system. In contrast, the Swiss legislator does not provide this proceeding in the federal criminal procedure code, the parties can resolve their conflict using the legal instrument called arrangement only. In the Italian criminal justice conciliation occurs in a specific way, by means of a specific legal institution, before the so-called Justice of Peace therefore I introduce it in a further subsection of the dissertation dealing with the other, special legal institutions of the Italian criminal justice.

The German name for mediation is offender victim mediation (Täter-Opfer-Ausgleich), which is a legal institution applied by both substantive and procedural law, so it covers a complex regulation. The legislator distinguishes the offender victim mediation in its original sense and reparation in the sense used by substantive law exclusively, their legal conditions and after that it defines the same legal consequences for both of them. The main characteristics of the legal institution of substantive law appear in the effort of the offender to reparation, in the communication process between the offender and victim, in the redress of the damages caused by the crime and in the order of the three alternatives of the fulfilment: namely the offender redressed the whole damage, they redressed it partly or pursued it seriously. The legislator placed the reparation outside the framework of the offender victim mediation, in the course of which it requires that the reparation for the offender shall mean a substantive personal fulfilment or a personal renouncement, in addition to the reparation of the damage as a whole or its overwhelming part. The procedural provisions prescribe extra obligations for the prosecution and the court, because they shall examine the possibility of arrangement between the offender and the victim in each phase of the proceeding and in cases where arrangement is possible they shall pursue to realise it. In mediation it is possible not to

file formal charges with conditions or drop the proceeding with conditions, which means arrangement combined with diversion.

3.3. The penal order proceeding has a long tradition in the three states, it is a tried and tested legal institution to accelerate proceedings, which – in the most general formulation – provides the possibility for arrangement without trial/out of court in cases considered to be simple from a legal and factual point of view. The regulations are basically consistent, there are no essential, substantive differences between them. In each country a written, a so-called summary proceeding is applied, in which there is no pre-trial phase or trial and the court (in Switzerland the prosecutor) reaches a decision concerning criminal liability upon the motion of the prosecutor, without the hearing of the defendant, solely based on the documents. Only the Swiss legislator rendered the application of the penal order proceeding obligatory if the legal conditions exist, and only the Swiss regulations referred the issue of the penal order under the competence of the prosecutor. I consider it necessary to emphasize that confession is not a condition either in the German or in the Italian criminal procedure, but in Switzerland it is an alternative. In my opinion rendering its application obligatory and making confession an alternative condition could contribute to the broader application of the penal order significantly.

3.4. Solutions based on the consensus of the parties, plea bargaining-like proceedings for accelerating them appear in all European criminal justices. Following the plea bargaining procedure, which was formed in the USA and it has spread from there, the European states have also created their own legal institutions which are more or less similar to the one in the USA but they are not adequate to it. It is verified by the fact that each of the three examined criminal justice systems contains plea bargaining-like regulations.

From among the investigated solutions the German legal institution must be emphasized. The agreements between the parties emerged from the practice and it is applied regularly nowadays as well, so it can be stated that it has a long tradition, due to which it plays an important role in the field of the acceleration of the proceedings. As a result, the legislator legitimized the praetor legem legal institution, which had existed for decades, by codifying it in 2009. This solution has many peculiarities. From among them it must be emphasised that on the one hand the legislator created broad legal conditions that is why it can be applied widely, on the other hand the agreement can be reached only during the trial, with the assistance of the judge. Its importance was increased by the Decision of the German

Constitutional Court in 2013, when the Court came to a decision pro its constitutionality. I found it important to present the researches concerning the negotiated agreement, because they offer a real picture of its enforcement and conclusions for the future can be drawn based on these results. Since the negotiated agreements have been applied widely, they have played a significant role in accelerating criminal proceedings.

However, according to the Swiss and the Italian solution it is possible to use the agreements even before the trial phase. In Switzerland the legislator did pioneer work when it introduced this legal institution in the new federal criminal procedure code and that is why only the frames of the regulation are given, so it will be possible to evaluate it only in the future. I find it noteworthy that in the Italian regulation the defendant is granted a significant degree of advantages without confession, so this solution helps to reach the agreement.

3.5. Further accelerating, so-called summary proceedings can be found in the German and Italian criminal procedure. The Swiss code does not contain further summary proceedings beyond the penal order proceeding, the plea bargaining-like shortened procedure and the procedure in the absence of the defendant. The reason for this in my regard is that the acceleration of proceedings is not a primary question for the Swiss legislator that is why this regulation is considered satisfactory.

In the German criminal procedure the expedited proceeding can be considered a summary procedure. In this procedure there is no pre trial phase, the trial takes place by reason of special prevention, but the evidence in the trial is more simple than in the normal proceeding and some formalities are abandoned. This proceeding plays a minor role in the practice.

The most forms of other accelerated proceedings are available in the Italian criminal system, the legislator created a differentiated system of them but they do not have any practical relevancy. The shortened proceeding has existed in the code since its entrance into force, since 1989, so it is a relatively young legal institution. Its essence is that there is no trial, the judge delivers the judgment during the pre-trial phase, based on the application regarding this proceeding of the defendant, which means that in the case of a verdict of guilt the sentence is more favorable than if the judge had delivered the judgment in the trial according to the normal rules. In contrast, the expedite proceeding has an old tradition, during this proceeding the investigation is shorter, there is no pre-trial phase and the main hearing takes place immediately after the investigation. The expedite proceeding is applicable in easier evidence position, mostly if the defendant is caught in flagrance in the act and is in custody or he or she confesses the crime. The application does not depend on the degree of

the crime but in extremely short time-limits, with too strict formality that aggravate its application. The next summary proceeding is the immediate proceeding that is very similar to the expedite proceeding, but it is not its pure reproduction The similarity and at the same time the accelerating function of this legal institution is that in case of an immediate proceeding the investigation is also shorter, there is no pre-trial phase and the trial takes place immediately after the investigation. The legislator intends to give a solution in cases when – similarly to the expedite proceeding – in an easier evidence position the time-limits given in the expedite proceeding are not enough. Compared to the expedite proceeding the basic difference is that the trial is conducted by the investigative judge.

3.6. In all the three states there is an opportunity to conduct the whole proceeding or part of it in the absence of the defendant, which has the function of acceleration. The regulations of the individual legal systems are heterogeneous, there are significant differences between them. The common feature is that all the examined criminal procedures acknowledge the right to the presence of the defendant as a basic principle and they allow exception just under tight conditions.

The proceeding in the absence of the defendant is permitted in the German law in a narrow scope, the Italian and the Swiss law permits it in a broader one. In the three states there is no uniform definition for this proceeding that is why it shall be studied separately in each criminal procedure. The provisions can be divided into two groups. On the one hand the regulations intend to sanction the conduct of the defendant if it is intentional, if it violates the obligation of presence, and if it is aimed at dragging the proceeding by procedural means. This is the so-called "in contumatiam proceeding" deriving from Roman law, in which the decision about the criminal liability may not be conceded. On the other hand is it possible to decide about the criminal liability in the absence of the defendant.

In Germany the absence of the defendant during the investigation is not an obstacle but his or her responsibility can be determined just in personal presence. The German principle is that the criminal procedure cannot be conducted without the defendant, so according to the provisions called "proceedings against absent accused" the court can take measures in the field of providing evidence, but it cannot deliver a judgment. There is a special solution to secure the presence of the defendant with financial tools, namely the seizure of the property of the defendant and to guarantee the defendant's safe conduct. The aim of this regulation is to persuade the defendant to appear before the court, to ensure the further conduct of the proceeding.

The proceeding in the absence of the defendant is a special proceeding in Switzerland. It is based on the “in contumatiam proceeding”, which is applicable if the defendant stays away from the procedure voluntarily, if he is “disobedient”, or “obstinate”. An important feature of the proceeding is that it is possible to deliver the judgment in the absence of the defendant, but the legislator intends to use it only in exceptional cases.

The Italian criminal procedure law gives many opportunities to conduct the proceeding in the absence of the defendant, but the purpose of these regulations is not the acceleration of the proceeding. They are not regulated as a special procedure, the provisions can be found dispersively (in some procedural acts, in regulations related to the hearing during the pre-trial and related to the absence in the main trial). It is possible to deliver the judgment to the merit if it can be stated that the absence of the defendant is voluntary.

3.7. I introduced in a separate chapter the other special Italian legal institutions for accelerating criminal proceedings that cannot be classified in the previous chapter. Among the examined states it is in Italy where new ways are being searched, remarkable initiatives appear and special legal institutions are applied.

Here we can mention the proceeding before a single judge that takes place according to more simple rules than the proceeding before the chamber of judges and also the restriction of appeals, which intends to prevent the delay of the proceeding on the second instance. The drop of the proceeding based on the payment of a certain amount of money can be found only in the Italian criminal procedure, it is not possible either in Germany or in Switzerland, whereas it is know in other European countries as well. The proceeding before the Justices of Peace is a special legal institution that offers diverse alternative types of disposal for a group of less serious crimes. This proceeding can be considered one of the main innovations of the Italian criminal law, which as “a soft and effective criminal law” on the one hand has the goal to reduce the overload of the Italian criminal courts and on the other hand – in the case of the mass of the less serious crimes – to create an alternative judicial criminal system. In this proceeding the obligation of conciliation to resolve the conflict between the parties, the alternative resolutions to the disposal of cases and the special sanction system have a significant role. The alternative criminal procedure covers three solutions: the waiver of the criminal claim by reason of the lack of importance of the crime, the expiry of culpability by reason of compensation and the conciliation between the parties. In these cases mostly there is no trial, so the procedure can be conducted faster and the courts can be discharged. The

conciliation and compensation often need more time, but because they take place out of the court proceeding, they have a function of acceleration as well.

I closed the presentation of the proceeding with two projects which can be regarded special. I analysed the provisions of the so-called “Short proceeding” (Processo breve) and the “Long proceeding” (Processo lungo), but they did not go through the legislation process.

4. I found it important to summarize the solutions presented and analysed in the dissertation in a separate chapter in the framework of a comparative examination to reveal the connections and evaluate them as well. I incorporated the results in tables for the sake of a better transparency and comparability.

Based on the research it can be established that the legislation of the three examined states is characterised by efforts to accelerate criminal proceeding. The problem of the dragging of proceedings appears most strongly in Italy. In Germany it is also one of the most important questions, although – compared to Italy – it does not play a decisive role. In the Swiss legislation the need for the acceleration of proceedings can also be observed, but this is not a significant tendency, because of the overload of the judicial bodies and the dragging of the proceedings is not so typical there.

In Germany despite numerous studies, monographs related to the topic and laws leading to reforms, calming results that could offer the final solution have not evolved yet and according to the majority point of view it cannot be expected either. Theory emphasizes the need to create a system in which the requirement of reasonable time can be enforced as widely as possible.

In Switzerland the cantonal regulation and the unified criminal procedure code that replaced it created a special situation. During the research I found legal institutions more or less similar to the German ones.

In Italy – due to the gravity of the problem – typically there are efforts for innovation but they concern only some parts of the system that is why they cannot be able to provide an overall solution.

5. As a summary it can be stated that the reason for the existence of the legal institutions aiming to speed up criminal proceedings is indisputable, the judicial systems would not only be able to operate effectively without them, but in my opinion their operability would be endangered. The individual legal institutions and solutions enforce diverse aspects that is why priority among them is not possible. The question for the legislator is, on the one hand, which

means can be used to realise the acceleration of the proceeding, on the other hand to what extent can acceleration be realised. We can accept as a basic principle the generally supported viewpoint according to which the goal should be acceleration not "by all means" but it should be "reasonable", i.e. to prevent the unnecessary and unreasonable dragging of the proceedings. The question for the law-applier is which legal institution is the most adequate one in the given case. I my dissertation I made an effort to give the proper answers to both questions.

My proposals concerning the modification and implementation of the law and to promote the change in the law-applying practice refer to the following fields:

1) the creation of the opportunity of an internal remedy against the violation of the reasonable time requirement;
2) the widening of the means deriving form the principle of opportunity, both in the field of the termination of the proceeding without conditions and the termination of the proceeding with conditions;
3) related to mediation the creation of the obligatory attempt in case of certain determined crimes, the introduction of other alternative types of disposal, the incorporation of the efforts to arrangement in law, reparation completely or partly or the serious effort to reparation as well;
4) within the scope of the penal order proceeding to make the confession and the simple nature of facts of the case an alternative condition; in the frame of "the objective of the punishment can be attained without a trial as well" condition it would be possible to evaluate the conduct of the defendant who did not confess the crime;
5) in the field of the plea bargaining-like proceeding – with regard to the fact that the special procedure waiver of the trial does not work in its present form – on the one hand a radical change in the attitude to the legal institution is needed, on the other hand a new proceeding different from the current one must be established, in the course of which a new plea bargaining-like proceeding of an experimental character giving the frame of a new regulation and clarifying the fundamental questions can be created;
6) in the field of summary proceeding a proceeding similar to the Italian shortened proceeding, i.e. a proceeding containing the consensual elements but without the bargaining elements must be established;

7) within the scope of the proceeding in the absence of the defendant the introduction of further means to incite the defendant to appear on the trial, or which define sanctions in case of his or her absence;
8) from among the special initiatives of the Italian criminal procedure the alternative forms of disposal during the proceeding before the Justice of Peace can be taken into consideration.

6. In the appendix I confirmed the fact of the dragging of the proceedings, the overload of the criminal justice, the types of the disposal of the cases and the frequency of the application of the legal institutions aiming to speed up proceeding with international and national statistical data.

Possibilities of the utilisation of research results

The results of the comparative research can hopefully be utilised in many fields.

The dissertation is the first monographic elaboration of the provisions aiming to speed up criminal proceedings applied in the German, Swiss and Italian criminal justice. Whereas the German criminal procedure has been an often researched field of Hungarian criminal lawyers, its comprehensive and complex study from the perspective of acceleration has been missing. The dissertation accomplished the analysis of the solutions aiming to speed up the proceeding in a system and placed them in a complete system. The research of the Swiss and Italian criminal procedure can be considered neglected by the Hungarian criminal jurisprudence that is why the dissertation remedied this deficiency.

With the presentation of the three legal systems the Hungarian legal culture has been enriched, it has become more colourful.

The choice of the issue is especially topical because of the codification of the criminal procedure code standing ahead us. In the course of the codification the analyses in the dissertation, the *de lege ferenda* proposals can be useful in terms of legislation.

The analysis and the interpretation of the constitutional questions, of the principles of the criminal procedure law could contain utilizable approach for the Hungarian dogmatism.

Nowadays practitioners can also be expected to be familiar not only with regulations used by them on a daily basis. To have knowledge of the similar problems of the states around us, their solutions, the tendencies in the course of their realisation must be a professional

expectation. The dissertation can be used in terms of the above described requirements for the law-appliers as well.

I also hope that that the dissertation can be utilized for the graduate and postgraduate education as well.

IV. List of publications written in the matter of the thesis

1) Effective Remedies for Excessive Length of Criminal Proceeding in Respect of International Requirements and the Hungarian Solution. In: *"Bratislava Legal Forum." International Academic Conference, Bratislava, 9-10 October 2015*. (in English) (currently being published)
2) Verfahrensabsprachen nach der gesetzlichen Regelung im deutschen Strafrecht (Plea Bargaining in German Criminal Law after the Regulation in the Criminal Procedure Code). In: *Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 2014. november 20.* Állam- és Jogtudományi Kar Szekciókiadványa, p. 99–104. (in German)
3) A büntetőügyek ésszerű időn belüli elbírálásának követelménye alapelvi megközelítésben – a német, svájci és olasz szabályozás összehasonlító vizsgálata (The requirement to expedite criminal proceedings from a basic principle approach: A comparative study of German, Swiss and Italian regulations). In: *A „Hiteles(ebb) tudományos prezentációk" 2014. március 13.* Professzorok az Európai Magyarországért Egyesület szervezésében. http://www.peme.hu/userfiles/Orvos%20-%20jog%20-%20t%C3%A1j%C3%A9p%C3%ADt%C3%A9szet%20szekci%C3%B3.pdf p. 56–67. (in Hungarian)
4) A büntetőeljárás egyszerűsítésének lehetőségei az olasz büntető jogban (Possibilities of simplification of the criminal proceeding in Italian Criminal Law). In: *Kriminológiai Közlemények Vol. 71, Kontroll és jogkövetés.* Hungarian Society of Criminology, Budapest, 2012. p. 308–323. (in Hungarian)
5) A büntetőeljárás reformja Svájcban, különös tekintettel az eljárást gyorsító rendelkezésekre (The reform of Criminal Procedure in Switzerland, with particular regard to provisions to accelerate the procedure). In: *Collegium Doctorum Jubilee Conference, 2011. április 11.* University of Miskolc Faculty of Law. http://www.uni-miskolc.hu/~wwwdeak/Collegium%20Doctorum%20Publikaciok/Farkas%20Krisztina.pdf (in Hungarian)
6) A kár megtérítésének lehetőségei az olasz büntető eljárásban (The possibilities of remedies of damages in the Italian Criminal Law). In: *Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 2011. november 8.* Állam- és Jogtudományi Kar Szekciókiadványa, p. 37–42. (in Hungarian)

7) Absprache nach neuem, eidgenössischem Strafprozess in der Schweiz (Plea-bargaining in the new federal Criminal Code of Switzerland). *Glossa Iuridica,* 2012/1, p. 12–15. http://www.glossaiuridica.hu/gi1201/alk/gi1201_alk_farkas.pdf (in German)
8) Possibilities to simplify the criminal procedure in a comparative perspective. In: *European Studies and Research Vol. II.* Public Law, International Conference of PhD Students in Law, Timisoara April 2010, Wolters Kluwer Romania, p. 269–280. (in English)
9) A megegyezés lehetőségei a magyar, német és olasz büntetőeljárásban – jogösszehasonlító megközelítés (Plea-bargaining in Hungarian, German and Italian Criminal Procedure: A comparative study). *Ügyészek Lapja* 2009. Special Issue, p. 45–52. (in Hungarian)
10) A büntetőeljárás gyorsítását célzó 2009. évi törvénymódosításról, különös tekintettel a tárgyalásról lemondás új szabályozására (About the modification of the Criminal Procedure Code in 2009 to accelerate the proceeding, with particular regard to Waiver of the Trial). In: *Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 2009. november 5.* Állam- és Jogtudományi Kar Szekciókiadványa, p. 17–22. (in Hungarian)
11) Az Európa Tanács büntető ügyekben folytatott mediácóra vonatkozó ajánlásának alkalmazása a tagállamokban és annak hatékonyabb végrehajtását szolgáló irányelvek (Application of recommendations of the European Council with regard to mediation in criminal cases in Member States, directives concerning its more effective implementation). In: *Studia Iurisprudentiae Doctorandum Miskolciensum,*Tomus: 10. Miskolc, 2009, p. 37–58. (in Hungarian)
12) Der Vergleich von der Mediation im ungarischen, deutschen und österreichischen Strafprozess (Comparison of the Mediaton in German, Hungarian and Austrian criminal proceeding). *Collega,* 2009/1–2, p. 83-87. (in German)
13) Tettes-áldozat egyezség a német büntetőeljárásban (Victim Offender Mediation in German criminal proceeding). In: *Tavaszi Szél, 2008. május 23-25. Budapest, Károli Gáspár Református Egyetem.* Doktoranduszok Országos Szövetségének Kiadványa, 2008, p. 630–637. (in Hungarian)
14) A büntetőügyekben alkalmazható közvetítői eljárás, annak egyéves gyakorlati tapasztalatai és továbblépési lehetőségei. (Mediation applicable in criminal cases, its experience after being used in practice for a year, further possibilities). In: *Studia Iurisprudentiae Doctorandum Miskolciensum,* Tomus: 9. Miskolc, 2008, p. 67–92. (in Hungarian)

15) Möglichkeiten der Beschleunigung und Vereinfachung im deutschen Strafprozess (Possibilities of the acceleration and simplification in German criminal proceeding). *Collega,* 2007/2–3, p. 225–228. (in German)

16) Möglichkeiten der Verkürzung von Strafverfahren in Deutschland und Ungarn (Possibilities of the simplification of the criminal proceeding in Germany and Hungary). In: *Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 2006. november 9.* Állam- és Jogtudományi Kar Szekciókiadványa, p. 55–59. (in German)