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*Court referendary
in criminal proceedings*

ABSTRACT

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The main purpose of this paper was to define the position of a court referendary in a criminal trial by establishing their legal professional and political status, as well as the scope of powers conferred on them, the procedure and control over the activity of a court referendary. The detailed objectives include: presenting the legal status of a court referendary in the legislations of selected European countries and the powers granted to them in procedures of other branches of law, defining the model of the institution of a court referendary in criminal proceedings compared to other participants in the criminal process, presenting the procedure for taking actions and issuing procedural decisions by a court referendary in a criminal trial, determining the legal nature and the effects of procedural decisions issued by a court referendary, presenting a detailed analysis of regulations concerning the control over their activity and defining the model of the institution of a court referendary on the grounds of *de lege ferenda* criminal procedure. The dissertation covers historical, legislative and comparative-legal issues, and is divided into nine chapters.

The first chapter presents issues which introduce the discussed topics. It presents both the historical outline of the institution of a court referendary, attempts made in the doctrine to define the term "court referendary", and the objectives of introducing the institution of a court referendary into the Polish judiciary. However, attention was paid primarily to presentation of the constitutional and international aspects of the court referendary's participation in criminal proceedings, which constitute the starting point for further considerations on the legal status of a court referendary. This chapter also presents the status of a court referendary in non-criminal proceedings, i.e. in civil and administrative court proceedings.

The second chapter presents the nature of the institution of a court referendary in selected legal systems of European countries, primarily in the German and Austrian systems, which were the first to introduce an official into the judiciary, whose task was to relieve judges from performing non-judicial tasks and become a practical way to solve the problems of an inefficient judiciary. The Spanish, French and Italian systems were also included. Moreover, the activity of organizations striving to unify the institution of a court referendary both in Poland and in Europe was presented.

Chapter three is of key importance to the subject matter. It assesses the legal nature of the institution of a court referendary. It presents the political and professional position of a court referendary, and compares their status to that of both a judge and a court clerk. Further, it shows the relationship between participation of a court referendary in a criminal trial consisting in the performance of tasks in the field of legal protection, and the administration

of justice. This chapter also presents the basics of judicial independence and the independence of a judge in the context of the status of a court referendary.

Chapter four presents the legal status of a court referendary in the context of their participation in a criminal trial. Their position in relation to the other participants in the criminal trial, and relationship to the guiding principles of the trial were also shown.

The following, fifth Chapter, presents the scope of the powers of a court referendary in a criminal trial. A division into two groups is presented. The first one, which covers the powers of a court referendary to make procedural decisions, includes issuing binding orders, discontinuing criminal proceedings, suspending criminal proceedings, issuing orders related to proceeding with the case, referring cases to mediation proceedings, adjudicating on the participation of a defense counsel or attorney, adjudication on enforcement clauses, ordering the issuance of copies and photocopies of files, issuing orders in proceedings for the reconstruction of lost or damaged files, as well as adjudication of material evidence, private prosecution cases and trial costs. The second group, which encompasses the referendary's powers related to taking procedural actions, includes participation in the evidence process, related to checking the facts and participation in activities carried out remotely. Moreover, additional powers were indicated, including tasks in the field of legal aid, which could be granted to a court referendary on the basis of a criminal trial.

Chapter six presents the proceedings of a court referendary – maintaining the previously adopted division of powers to issue procedural decisions and to take actions. It discusses the method of appointing a court referendary to issue an authoritative declaration of will and taking action, and specifies the forum for the proceedings of the court referendary and the content of the decisions issued by them. Against the background of these considerations, the legal effects and rectification of procedural rulings issued by a court referendary were also analysed.

Chapter seven deals with the control exercised over the activity of a court referendary. Judicial control has been distinguished, which refers to the powers exercised by them in the course of specific criminal proceedings, and administrative control related to other non-judicial and non-procedural activities of a court referendary, performed in the criminal division of a court, i.e. activities of an administrative and technical nature. These considerations continue the division into control arising from appealing the procedural decisions issued by a court referendary and the control of actions taken by them.

Chapter eight deals with the legal consequences of irregularities in the actions of the court referendary and the liability incurred by them in this respect. The issue of disciplinary,

criminal and compensatory liability was specified. Finally, attention was also paid to the issue of liability related to the lengthiness of a criminal trial caused by a court referendary.

Chapter nine presents regulations concerning the participation of a court referendary in other proceedings of a repressive nature, i.e. in proceedings in cases of petty offenses, enforcement proceedings, and fiscal penal proceedings, in which the legislator also delegated certain powers to court referendaries.

The development of the institution of a court referendary is an extremely important research issue. It touches upon the issue of the activity of courts, including the limitation of their jurisdiction in favour of non-judicial entities. Hence, it was extremely important for the author to comprehensively present the institution of a court referendary in criminal proceedings against the background of its development so far in Poland and Europe.