PRINCIPLES OF POLISH CRIMINAL PROCEDURE

Little is available in English on the procedural aspects of the Polish criminal justice system and the tenets of its criminal process. This authoritative new work addresses this gap, setting out an analysis of the founding principles, its main phases and of those systemic and structural components which inform it. Taking an applied, practical approach, it surveys the process from beginning to end. Pre-trial, trial, post-trial, questions of evidence and remedies are all clearly addressed. The authors, two acknowledged experts in the field, also explore the role of more general rule of law/standards of law questions that are currently impacting on the law and its interpretation. Comparative criminal lawyers will welcome this important new work.

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Principles of Polish Criminal Procedure

Jarosław Zagrodnik
and
Kazimierz Zgryzek
I am pleased to present the first book devoted to a comprehensive outline of Polish criminal procedure for English-speaking readers. It includes a presentation of the conceptual assumptions, the basic rules and procedural tools, the main procedural actors and the fundamental components of the process in criminal cases. It is my hope that the book will not only allow the reader to become familiar with the specifics of Polish criminal procedure in theoretical and practical terms, but will also become a reference platform for comparative analyses and play a role in the development of the science of comparative criminal procedural law. The book, in its conceptual and theoretical structure, is integrally inscribed in the ideological assumptions of the rule of law, democratic legal order and in the material and procedural aspects of justice. Therefore, it is not devoid of critical remarks as to how these assumptions are realised in current Polish regulation of penal procedural law. I am the author of the introduction and five of the eight chapters. Three chapters concerning the System of Principal Procedural Rules; Proceedings before the Court of First Instance; and Evidence, were prepared together with Professor Kazimierz Zgryzek. At this point, I would like to express my great thanks to the Professor for agreeing to participate in the preparation of the book and enriching the monograph in our jointly prepared chapters with his knowledge and experience.

This book would not have been written were it not for the inspiration, commitment and great kindness of Professor Michael Bohlander. I hereby express my gratitude to Professor Bohlander. I also hope that the content of the book will meet his expectations.

I would like to express my gratitude to Hart Publishing both for the honour of publishing this monograph and for their great support in giving the book its final shape, both in terms of content and layout.

Finally, my deepest thanks go to the most important persons to me, my parents and my son Timothy for their understanding of my work and ongoing support, without which the preparation of the text of the book would not have been possible.

Jarosław Zagrodnik
# CONTENTS

Preface .............................................................................................................................................. v

Introduction: The Purpose of the Book (Jarosław Zagrodnik) ...................................................... 1
   Polish Materials Used ...................................................................................................................... 2
   Historical Development .................................................................................................................. 3

1. Basic Concepts (Jarosław Zagrodnik) ...................................................................................... 4
   The Model of the Polish Criminal Trial ....................................................................................... 4
   Subject Matter and Purposes of Criminal Proceedings ............................................................... 9
   Sources of Criminal Procedural Law ......................................................................................... 11
   Procedural Grounds ...................................................................................................................... 14
   The Criminal Trial Process ......................................................................................................... 17
   Terminological Issues ................................................................................................................... 18
   Types of Procedural Decisions .................................................................................................. 18
   Characteristics of Procedural Actions ......................................................................................... 20
   Procedural Time Limits ............................................................................................................... 21
   Form of Procedural Actions ......................................................................................................... 24

2. The System of Principal Procedural Rules (Jarosław Zagrodnik, Kazimierz Zgryzek) ........ 27
   Introduction .................................................................................................................................. 27
   Constitutional Principles .............................................................................................................. 28
   Principles that Relate to the Initiation of a Criminal Trial ......................................................... 30
   Rules Relating to the Evidentiary Proceedings .......................................................................... 36
   Principles Relating to the Form and Conduct of the Trial ......................................................... 40
   Principles Concerning the Position of the Accused in the Criminal Process ......................... 47

3. Actors in the Criminal Process (Jarosław Zagrodnik) ............................................................... 55
   Courts and Judges ......................................................................................................................... 55
   Jurisdiction *Ratione Materiae* and *Ratione Loci* ................................................................. 57
   Examination of Jurisdiction with Consequences of Violating its Rules .................................. 65
   Conflicts of Jurisdiction .............................................................................................................. 66
   Staffing of the Courts: Professional and Lay Judges ............................................................... 67
   Composition of the Court’s Panel ............................................................................................. 72
   Exclusion of Judges .................................................................................................................... 74
## Contents

**Criminal Prosecution** ................................................................. 80  
Police and Other Law Enforcement Authorities .......................... 87  
Defence ....................................................................................... 89  

4. **Coercive Measures (Jarosław Zagrodnik)** .......................... 103  
   System of Coercive Measures ............................................... 106  
   Arrest .................................................................................... 107  
   The Main Precautionary Measures ...................................... 112  
   Search and Seizure ............................................................... 136  
   Coercive Medical and Psychological Examination .............. 144  
   Surveillance and Recording of Conversations ..................... 149  

5. **Pre-trial Investigation (Jarosław Zagrodnik)** .................... 157  
   Pre-trial Investigation Model ................................................ 157  
   Tasks (Objectives) of Pre-trial Proceedings ......................... 161  
   Scope and Forms of Activity of Parties and their Representatives in an  
   Investigation ....................................................................... 165  
   Forms of Pre-trial Proceedings ............................................. 169  
   Initiation of Investigation .................................................... 171  
   Presentation of Charges ......................................................... 175  
   Closure of a Principal Investigation or a Simplified Investigation ... 180  
   Principal Criminal Complaint ............................................. 183  

6. **Proceedings before the Court of First Instance (Jarosław Zagrodnik, Kazimierz Zgryzek)** ..................................... 190  
   Preparation for the First-Instance Trial ................................ 190  
   Preliminary Examination of the Case ................................... 197  
   Preliminary Hearing .............................................................. 204  
   Actions Related to the Organisation of the Main Trial .......... 205  
   General Characteristics of the Main Trial ......................... 208  
   Preliminary Part of the Main Trial ...................................... 210  
   Judicial Examination ............................................................ 215  
   Interruption and Adjournment of the Trial ......................... 223  
   Interruption and Adjournment for the Presentation of Evidence ... 225  
   Final Actions in the Court of First Instance ....................... 237  

7. **Evidence (Jarosław Zagrodnik, Kazimierz Zgryzek)** .......... 243  
   Introduction ........................................................................ 243  
   The Concept of Evidence ................................................... 244  
   Evidentiary Prohibitions ...................................................... 247  
   Prohibition on Substitution of Testimony or Explanation .... 255  
   Prohibition on the Use of Inadmissible Methods of Proof ...... 255  
   Prohibitions on the Use of Evidence in a Criminal Trial ....... 257  
   Proving .............................................................................. 258  
   Stages of Proving ............................................................... 263
## Contents

Evaluation of Evidence and Making Findings of Fact .......................................................... 270
The Procedural Experiment and its Results ................................................................. 284
Inquiry within the Community .................................................................................... 285

### 8. Appeal Measures (Jarosław Zagrodnik) ................................................................. 287

- System of Appeal Measures ................................................................................. 287
- Features of Appeal Measures .............................................................................. 289
- Ordinary Appeal Measures .................................................................................. 290
- Right to Appeals Measures: Withdrawal of Appeals Measures ......................... 291
- Formal Requirements for the Appeal Measure ..................................................... 293
- Inadmissibility of an Appeal Measure and Lack of Entitlement or Violation of a Time Limit for Lodging it; Verification of Formal Requirements for an Appeal ................................................................. 295
- Scope of Appellate Review .................................................................................. 296
- Limits of Appellate Control .................................................................................. 297
- Reasons for Appeal ............................................................................................... 298
- Direction of the Appeal Measure ......................................................................... 307
- Prohibition of *Reformationis in Petus* .............................................................. 308
- Decisions in the Appellate Instance ................................................................. 310
- Appeal and Appeal Proceedings ....................................................................... 312
- Complaints and Complaint Procedure ............................................................... 318
- Extraordinary Appeal Measures .................................................................... 322
- Complaints Against Appellate Court Judgments .............................................. 329
- Renewal of Proceedings ..................................................................................... 333

*Index* ......................................................................................................................... 339
Introduction: The Purpose of the Book

In explaining the title of this book, which is a part of a series of studies on legal systems, it should be emphasised that the book presents an outline of Polish criminal procedure. The aim of the book is not to present in a detailed and comprehensive way all the solutions, institutions and mechanisms of criminal procedural law that might fall under this title, but to analyse and emphasise those that make it possible to explain the structure of the Polish criminal process, to present its main actors and their procedural roles, key procedural actions (decisions) as well as basic means of procedural coercion that intersect deeply with the sphere of civil liberties and rights. The extensive and constantly evolving legal regulation of international cooperation in criminal matters, as well as the regulation of compensation issues in a criminal trial, remain beyond the scope of this work. Only the problem of prosecuting certain crimes privately has been outlined.

Due to the assumptions adopted and presented above, the book concentrates on presenting particular legal solutions and their basic characteristics, taking into account the achievements of the doctrine of penal procedural law and the court judicature. Theoretical considerations, therefore, recede into the background and are limited to the most controversial issues, especially those concerning legal constructions that raise objections from the perspective of their compliance with the standards of human rights and freedoms set out in the Polish constitution and the European Court for Human Rights. Some deeper reflections accompany a critical analysis of the inquisitorial model of the trial in the current legal state.

To those more familiar with common law legal culture, the Polish criminal trial, based strictly on the provisions of the Criminal Procedure Code (CPC), which set a rigid legal framework for the activities of procedural authorities, including the courts administering the justice, as well as the activities of other procedural participants, may seem to be overly formalistic. Within this framework, there is no possibility of resorting to a certain flexibility and freedom in the pursuit of justice in individual cases, characteristic of the common law system, based on recourse to what is referred to as common sense. The indicated binding and, at the same time, limiting of the procedural organs, as well as of other participants of the process, by rigid procedural rules, strongly referencing Germanic legal culture, is shown in its full form in the following chapters of this book.

The fundamental law concerning criminal trials is the aforementioned CPC, within the framework of which the provisions of substantive criminal law, contained mainly in

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2 ibid 2.
the Criminal Code (the basic act defining types of crimes), are implemented. The penal-procedural matter is also reflected in constitutional acts concerning courts (ie the Law on the Common Court System and the Supreme Court Act and certain other acts of 20 December 2019).

In practical terms, the interpretation of provisions of the criminal procedural law is significantly influenced by constitutional standards, which will be discussed later. At this point it should be emphasised that this influence may result from the jurisprudence of the Constitutional Tribunal concerning the compliance of the provisions of the CPC with the Constitution of the Republic of Poland, or it may be based on the direct application of the provisions of the Constitution of the Republic of Poland by common courts, or on the pro-constitutional interpretation of penal procedural norms. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR) have an analogous impact on the process of applying the provisions of the CPC. It should be added that the judgments of the Court, apart from their binding character resulting from their issuance in a specific case against Poland as a state party to the ECHR, also affect the process of application in other cases by setting out the proper direction of interpretation of the provisions of the Convention, which should be respected at the national level and reflected in the pro-conventional interpretation of the provisions of the CPC. This view is consistent with the position expressed years ago by the then independent Constitutional Tribunal, according to which the courts bound by the Convention should, in the course of applying the law, refer to the principles and methods of interpretation leading to results that are in harmony with the standards set out in ECtHR judgments.

Polish Materials Used

The framework of this book and its main goal of outlining Polish criminal procedure have determined that the literature sources should be limited to the most important monographs, commentaries and textbooks. The source material of the book is significantly supplemented by references to the jurisprudence of courts, especially the Supreme Court, whose decisions significantly influence the application of penal procedural law by common courts subject to its supervision. To avoid misunderstandings, it should be noted that in the Polish legal order the stare decisis rule does not apply, but common courts in practice respect the views of the Supreme Court in interpreting binding provisions. These courts are absolutely bound by the view of the Supreme Court if it was contained in a resolution of this Court adopted in response to a legal question referred to it by the appellate court ruling on a given case, aimed at resolving a legal issue requiring a fundamental interpretation of the law (Article 441 § 1 CPC). In other

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cases, the binding character of common courts to the views of the Supreme Court in the matter of interpretation of the applicable regulations is indirect and based mainly on *sui generis* prognostic motivation, consisting in the fact that a common court has to take into account the fact that basing a decision on a view different from that presented by the Supreme Court will lead to its being challenged, if not in the appellate court, which in turn will take into account the interpretative standpoint of the Supreme Court, then as a result of filing a cassation appeal to the Supreme Court. This applies in particular to those views of the Supreme Court which have the force of a legal principle, i.e., which are formulated in a resolution adopted by the full composition of that Court, a composition of the combined Chambers or a composition of the full Chamber, or in a ruling issued by a bench of seven judges which has decided to give its resolution the force of a legal principle (Article 87 § 1 Supreme Court Act). Such rules are binding on all formations of the Supreme Court, unless a departure from the legal principle is made by the relevant composition of that Court (Article 88 Supreme Court Act).

### Historical Development

The book does not include a description of the historical development of the criminal trial process in Poland, as it is not necessary for the realisation of the underlying premise. Historical references are consequently sporadic and constitute only a background for a better understanding of the legal solutions and mechanisms in force, especially when viewed from the conceptual perspective.

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Basic Concepts

The Model of the Polish Criminal Trial

Despite the passage of more than three decades since 1989 when Poland regained full independence and freed itself from Soviet influence, it has not yet been possible to establish a model criminal trial which fully meets the challenges of the present day and above all the standards of a democratic state governed by the rule of law, particularly in terms of guaranteeing the protection of the rights and freedoms of citizens involved in the operation/action of a complex procedural machinery. Progressive changes in criminal procedural law made between 2013 and 2015 were essentially annihilated in 2016 on a ratione imperii basis as a direct result of right-wing groups coming to power. Under the slogan ‘the desire to guarantee the implementation of the principle of truth’ in criminal proceedings, changes have been made to criminal procedural law, setting it back in terms of development and in essence marking a return to the model solutions that are deeply rooted in the past, in the patterns of thought developed in the largely authoritarian entourage of 1944–1989, under the aegis of the police state, only to undergo a kind of ‘facelift’ in the spirit of the democratic rule of law in the original version of the 1997 CPC. These changes brought about a de facto strengthening of the inquisitorial elements in the area of the regulation of the course of criminal proceedings, in particular with regard to the main trial, and a significant expansion of the procedural authority of the public prosecutor (eg in new provisions of Article 168b and Article 237 and amended provisions of Article 328 § 2 and Article 524 § 3 CPC) and its advantage over other procedural guarantees, eg by opening up the way to obtain a judicial review, eg by opening the way to obtain, in the court proceedings, the assistance of a defence counsel or an official representative without having to prove their incapacity or by explicitly excluding the taking and use of evidence obtained for the purposes of the criminal proceeding by means of a prohibited act as defined in Art 1 § 1 CC of the Act of 6.06.1997 – Penal Code (Art 168a CPC in its original wording).

1 See J Zagrodnik, Model interakcji postępowania przygotowawczego oraz postępowania głównego w procesie karnym (Warsaw, Wolters Kluwer, 2013) 1–41.

2 The core of these changes was a reshaping of the trial model that was subordinated, on the one hand, to increasing the scope for applying solutions that allow the consensual conclusion of criminal trials, and on the other hand, to striving to ensure the actual adversarial nature of the trial in contentious cases which requires to be examined in the main trial, while at the same time strengthening the reformatory (exploratory) aspect of sentencing in the appeal instance. The reconstruction of the judicial process in this spirit meant the actual empowerment of the parties at the final trial and the expansion of procedural guarantees, eg by opening up the way to obtain a judicial review, eg by opening the way to obtain, in the court proceedings, the assistance of a defence counsel or an official representative without having to prove their incapacity or by explicitly excluding the taking and use of evidence obtained for the purposes of the criminal proceeding by means of a prohibited act as defined in Art 1 § 1 CC of the Act of 6.06.1997 – Penal Code (Art 168a CPC in its original wording).

3 Zagrodnik (n 1) 504.
The Model of the Polish Criminal Trial

parties in judicial proceedings (e.g., amended Article 55 § 4 and added Article 396a CPC), while at the same time lowering the guarantee standard of criminal trials.4

It should be pointed that outlining the current shape of the Polish criminal trial model requires considering how it is shaped in the pre-trial (preparatory) proceedings and the main proceedings (judicial proceedings).

Regarding the preparatory proceedings, it should be emphasised first of all that its purpose is not only to allow the prosecutor to verify the grounds for the indictment (or other main complaint) or otherwise discontinue the proceedings. According to Article 297 § 1(5) CPC, the objective of the preparatory procedure is collecting, securing and preserving evidence for the court – to the extent necessary. This combination of tasks, which offers wide-ranging possibilities for clarifying the case during the pre-trial proceedings (Article 297 § 1(4) CPC), in fact exemplifies the superiority of the pre-trial proceedings over the main proceedings, particularly the main trial, in terms of clarifying the case and gathering evidence. An extreme manifestation of this superiority is the reduction of the evidentiary proceedings at the main trial to, in essence, a review of the validity of the findings of the pre-trial proceedings, which often simply consists of the judge repeating the findings of the first stage of the process. That there is no added value in this, as far as the knowledge (cognitive) process of the main trial is concerned, seems almost self-evident and needs no proof. At the same time, this raises the danger of basing a judgment on evidence that is tainted by an accusatory bias of the prosecuting authorities and, consequently, on factual findings that only take into account the interests of one of the actors, namely the public prosecutor. This calls into question the optimal guarantee of the rights of defence of the accused in the judicial proceedings.

There are two forms of pre-trial procedures: principal investigation and simplified investigation. These two forms of investigation do not differ, either in their internal structure or in their tasks. For each of them, within their structural order, it is possible to distinguish between an in rem phase, i.e., so-called anonymous prosecution (of the case), and an in personam phase, i.e., so-called real criminal prosecution (against the person). In each of these forms, the pre-trial procedure is a non-judicial procedure. The police are the main body that conducts the proceedings which performs evidentiary activities in the pre-trial proceedings. In what constitutes the predominant form of simplified investigation, the police are the primary body conducting the pre-trial proceedings (argumentum ex Article 325 a § 1 CPC). Although the prosecutor is the main body in the principal investigation (Article 311 § 1 CPC), in practice, it is the police who carry out most procedural acts in this proceedings, given the widely used possibility to make a full or partial response or to entrust specific procedural acts to them (Article 311 § 2 CPC). Regardless of who conducts the preparatory proceedings and who carries out the individual acts of taking evidence, a wide range of evidence gathered at the first stage of the criminal proceedings can, and in practical terms

does, flow into the main trial. The presented picture of a principal investigation and a simplified investigation, proving that there are no substantial differences between these forms of pre-trial proceedings, undoubtedly puts a question mark on the sense of their normative separation.5

Against the background of the regulation of court proceedings, a distinction can be made between consensual procedural processes, generally involving a motion for a judgment of conviction to be issued in a session (Article 335 §§ 1 and 2 in connection with Article 343 CPC), voluntary surrender of responsibility (Articles 338a and 343a CPC) or a motion for the conditional discontinuance of the proceedings (Articles 338a and 343a CPC), and the trial of the case at the main proceedings (main trial).6 Having regard to what has been said about the pre-trial proceedings, it should be pointed out that the distinguished courses of court proceedings are not interrelated to the distinction between the two forms of investigation. In other words, each of the specified court proceedings may be preceded by both a principal investigation and a simplified investigation. For each of them, the range of evidentiary activities (clarification of the case and preserving evidence) carried out in the preparatory proceedings is essentially the same. Basically, as an exception is made for the so-called a motion for a judgment of conviction to be issued in a session that is based on an accused’s plea guilty that opens the way for the omission of further procedural acts in the pre-trial proceedings (Article 335 § 1, first sentence CPC). A similar connection between the scope of the clarification of the case and the course of the judicial proceedings is distinctly missing in relation to the main hearing (main trial). One would expect in this case that the priority of the main hearing over the clarification of the case in the pre-trial stage would be clearly established.7

The consensual model of the court proceeding consists in substantive adjudication by the court at a session (posiedzenie wyrokowe) on the basis of the investigation file, i.e., the evidence collected under the conditions of the inquisition. It is based on the filing with the court of one of the aforementioned motions which is filed instead of the indictment or attached to it. These motions are the expression of an agreement between the prosecution and the defence to settle the subject of the trial. Their consideration implies the acceptance of this agreement and the proposed outcome by the court. However, the court retains the right to modify these motions subject to the approval of the parties. The conclusion of a criminal trial by deciding on its subject at the session results, on the one hand, in a conciliatory resolution of the dispute arising from the commission of a criminal offence, and, on the other hand, in the speeding up of the criminal trial by avoiding the often lengthy evidence procedure. De lege ferenda, a comprehensive regulation of the consensual course of judicial proceedings and its close connection with the regulation of the pre-trial phase would be desirable. It would also be expected that the possibility of a consensual end of criminal proceedings will


6 Zagrodnik (n 1) 506.

7 Zagrodnik (n 1) 287–300; see also L Schaff, Zakres i formy postępowania przygotowawczego (Warsaw, Wydawnictwo PWN, 1961) 160ff.
be extended so that this will eventually be the case in at least 80 per cent of the cases submitted to the court.

In terms of the second model of the judicial proceedings, the model structure of the main hearing is of crucial importance. In this respect, it should be stated at the outset that the main hearing is entirely inquisitorial in nature.\(^8\) It is characterised by the 'hyperactivity' (hiperaktywność) of the court and the presiding judge during the taking of evidence. Several factors determine this. First of all, in principle, is the unlimited evidentiary initiative of the court and its obligation to clarify ex officio all circumstances important to the determination of the case (argumentation ex Article 168 in conjunction with Article 2 § 2 and Article 366 § 1 CPC). No less important is the practical imposition on the court of a proactive attitude to the clarification of the case and the taking of evidence at the main hearing supported by the systemic exemption of the public prosecutor from responsibility for the 'success' of the prosecution – the outcome of the trial. Without such responsibility, the public prosecutor may be generally passive during the main hearing. Moreover, in the vast majority of cases, such as those where the pre-trial stage ends in the form of a simplified investigation, the public prosecutor does not have to be present at the trial at all (Article 46 § 2, first sentence CPC). This means, in essence, by virtue of the aforementioned obligations incumbent on the court, that the burden of proof is reversed to the court and the court takes steps that constitute the exercise of the function of prosecution. When juxtaposed with this solution that the participation of the accused at the main hearing is in principle his prerogative (Article 374 § 1 CPC) and hence he/she does not have to be present at the trial, we see a picture of a main hearing in which the court remains the only active and present actor during the evidential process. It seems obvious that under such conditions there can be no question at all of an adversarial process at the main trial – not only in its developed form, taking the shape of a genuine legal dispute between equal parties before a court, based on evidence conducted before that body as an impartial arbiter deciding the dispute, but also in its partial form, namely a main hearing involving the taking of evidence with the participation of the parties. In the light of the comments made, it can be said that the main trial is a forum for examining a case with the participation of the parties only possible in the evidentiary hearing, in any case subordinated to the dominant role of the court, which consists mainly – due to the principle of the presumption of innocence – in taking actions that make up the implementation of the function of the prosecution in a criminal trial.\(^9\)

It should be also pointed out that de facto the passivity of the public prosecutor, the real transfer of the burden of proof to the court and the 'hyperactivity' of this body during the evidentiary procedure would not have been possible had it not been for the fact that the court has unlimited access to the pre-trial files, allowing it to get an idea of the evidentiary steps to be taken, in particular the questions that need to be asked

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\(^{9}\) Grzegorczyk (n 8) 17; Zagrodnik (n 8) 223.
of the prosecution witnesses. With such access, the court proceeds to hear the case under according to the investigation file, tainted by the accusatory bias of the criminal prosecuting authorities.\textsuperscript{10} There is no mechanism to counterbalance this suggestion or to prevent such suggestion. There are thus insufficient guarantees that the court will maintain the distance from the case that is necessary to ensure an impartial judgment, free from the power of suggestion resulting from a reading of the investigation files. In addition, there is wide scope for the evidence in the investigation file to be used as part of the consideration of the case at trial and, as a result, to have a real impact on the evidential basis for the sentence, although this is most often carried out by the prosecuting authority under conditions of investigative and secrecy, i.e., without the involvement of the parties and their professional representatives.

Regarding the status quo of the main hearing outlined above, it can be concluded that because of the position of the presiding judge and the court in this forum—which negates the fundamental division of procedural functions between charge, defence and adjudication—the significant influence of the evidence collected during the investigation on the examination and determination of the case by the court, and the lack of real guarantees that the evidence will be taken at the main hearing with the active participation of the parties, there is currently no possibility for an independent court to decide the case and play its role as an impartial arbiter, based on a dispute between equal parties, according to evidence placed directly before this authority which allows the use of the dialectics of the cognitive process to reconstruct the course of events relevant to criminal law.\textsuperscript{11} Taking the view that this possibility, involving a completely adversarial trial, is the optimal method to achieve substantive and procedural justice in cases of factual and legal complexity that come before the court, one should definitely advocate its introduction into the Polish legal order. There are strong arguments in favour of such a solution for guarantee reasons, in particular for empowering the accused during the evidentiary procedure at the trial and thus ensuring that he has a real possibility to exercise his rights of defence and to enter into a substantive defence against the prosecutor. Ensuring in this way the implementation of the adversarial principle in criminal trials, in its developed form, should be accompanied by more extensive changes in criminal procedural law, fully subject to the principles of a democratic state under the rule of law, taking into account the constitutional standards and treaty obligations of the Republic of Poland and guarantees the protection of human rights and freedoms, corresponding to a humane approach tailored for the twenty-first century. The framework and nature of this chapter do not allow for a detailed presentation of the proposals for such amendments, and some of these deserve a broader discussion and analysis, from both a theoretical and a practical point of view.\textsuperscript{12}

\textsuperscript{10} Zagrodnik (n 1) 180–85.

\textsuperscript{11} Zagrodnik (n 4) 125–26.

\textsuperscript{12} These proposals were recently outlined in the publication, entitled: ‘Model of Criminal Trial Status Quo and Status Futurus – Some Reflections on Two Realities, Not Only Normative’, in Pursuit of a Reliable Criminal Trial. Księga dedykowana Professorowi Stanisławowi Waltosiowi (Warszaw, 2022) 120 and next.
Subject Matter and Purposes of Criminal Proceedings

The subject matter of criminal proceedings is not uniformly understood in the Polish literature.

Against the background of the preventive and resocialising model of criminal law binding in Poland, a theory developed which envisaged explaining the subject matter of a trial by means of the term *ius puniendi*. According to this theory, the subject matter of a criminal process is a claim that the state has against the offender (*ius puniendi*). The content of this claim is the power of the state to impose penalties and other measures in response to the crime committed. At present, this theory does not find acceptance in Polish criminal procedural law, mainly because it links the subject of the trial with the existence of a criminal–material relationship or, more simply, with the fact that an crime has been committed. In questioning this connection, it is pointed out that under the theory put forward, the subject matter of the criminal process would in fact depend on the commission of the crime. It would therefore exist in those cases where, as a result of the criminal trial, the fact of the crime would be established. While such cases predominate in practical terms, there are also situations where a criminal trial results in a discontinuance or acquittal as a consequence of a finding of no crime. If one were to adhere to the theory of *ius puniendi*, one would have to assume that in the situations mentioned above, the criminal trial lacked a subject from the outset.

On the basis of the criticism of the theory of *ius puniendi* outlined above, a now widely accepted understanding of the subject of a criminal trial has crystallised, which considers it is that which the trial is subordinate to, and which is to be determined and resolved by it. To clarify this thought it is assumed, following Cieślak, that the main subject of a criminal trial boils down to the question of the legal responsibility of a convicted person for an crime that has been charged (or attributed) to them. This issue raises the following questions: whether a crime has been committed at all and who committed it, in what form, and what legal consequences they are to bear for it. The subject matter of the trial is therefore not the mere fact that a crime has been committed, since the examination of the relevant facts does not constitute an aim in itself but only an intermediate objective that serves to determine liability and the extent of the liability. Without in any way questioning this precise understanding of the subject matter of the criminal trial in the Polish doctrine of criminal procedure, it must be pointed out that, sometimes with some simplification, the subject matter is nevertheless identified with the criminal offence itself.

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18 ibid. We can find such idea in English doctrine of criminal process – see A Ashworth and M Redmayne, *The Criminal Process* (Oxford, Oxford University Press, 2005) 19.
The term of the subject matter of a criminal trial is closely related to the determination of the main purpose of this trial, because this purpose is to decide the subject matter of the criminal process.\(^\text{19}\) However, not every ruling on the substance of a criminal trial achieves its objective, namely that the ruling embodies justice in the substantive sense, and is therefore in that sense just. Substantive justice is thus a ‘measure’ of how a ruling in the subject of a criminal trial (i.e., the end result of the criminal trial) is assessed in terms of achieving the aim of the trial. At the criminal procedural law level, ‘substantive justice’ is closely linked to the procedural justice. This last term should be identified with the procedure that provides the highest degree of probability of achieving a substantively just result (achieving substantive justice). A just procedure in this sense creates a presumption of a just ruling of the subject matter of the criminal process.\(^\text{20}\)

Substantive justice and procedural justice are two complementary conceptual categories of justice.\(^\text{21}\) The assumption of the achievement of substantive justice in the criminal process leads directly to \textit{sui generis} an ‘order’ for the establishment (construction) of institutions and procedural mechanisms, allowing the achievement of this purpose. One can find support for this order in the normative framework, in Article 2 § 1 CPC, according to which the purpose of the CPC is to establish rules of criminal procedure which ensure that:

1. the perpetrator of a criminal crime is detected and held criminally liable and that no person who has not been proven guilty bears such liability;
2. by a correct application of measures provided for in the criminal law, and by the disclosure of circumstances conducive to committing a criminal crime, the tasks of criminal procedure be fulfilled not only in combating crime but also in preventing it, as well as in consolidating the rule of law and the principles of community life;
3. legally protected interests of the injured be secured and that, at the same time, the dignity of the injured be preserved;
4. resolution of the case be achieved within a reasonable time.

The directives guiding the criminal justice process, highlighted above in points 1 and 2, constitute the principle of an adequate penal response (\textit{zasadę trafnej reakcji karnej}). This principle reflects the coupling of the overarching aim of the criminal justice process and the demand for substantive justice.\(^\text{22}\)

Against the background of the above, and in order to avoid any misunderstanding, it must be pointed out that the aim of a criminal trial is not to establish the truth in the classical sense as the reconstruction of objective reality. Truth in this sense is not and cannot be an end in itself. Nor is it a measure of substantive justice. This becomes clear when one considers that a materially fair outcome of a criminal trial cannot be excluded even though the truth has not been established in the trial. And conversely, there

\(^{19}\) Marszał (n 14) 14–15.
\(^{22}\) M Ciesiak, \textit{Nieważność orzeczeń w procesie karnym PRL} (Warsaw 1965) 5.
is a possibility that a decision on the subject matter of a criminal trial lacks material justice although it is the result of the discovery of the truth in the criminal trial. This leads to the conclusion that the directive that the decision should be constituted by the findings of fact and thus aim at restoring objective reality in a criminal proceeding (Article 2 § 2 CPC) must be seen only in the context of maximising the probability of achieving a materially fair decision on the merits of the criminal proceedings.\textsuperscript{23}

The findings so far have concerned the main purpose of the criminal trial. In addition to the main goal, one can distinguish partial goals which are to be achieved at different stages of the trial and which are synchronised with the main purpose. In the case of pre-trial proceedings, these objectives are set out in Article 297 CPC, which is outlined in chapter five. The purpose of the appeal proceedings is to correct defective rulings.

**Sources of Criminal Procedural Law**

In criminal procedural law, the term ‘source of law’ is used in the normative sense. In this sense, a source of law is a formalised act of state authority that establishes the provisions of applicable law.\textsuperscript{24} Sources of criminal procedural law are sources of universally binding law in the Republic of Poland. These include, in accordance with Article 87 (1) of the Constitution of the Republic of Poland, the constitution, statutes, ratified international agreements and regulations. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof (Article 88 para 1 Polish Constitution).

The main sources of criminal procedural law are outlined in the following subsections.

**The Constitution of the Republic of Poland**

At the constitutional level the limits and at least the basic conditions of state interference in the sphere of rights and freedoms of the individual in the conditions of the criminal trial are primarily determined. On the same grounds the system and fundamental principles of the functioning of the administration of justice as one of the forms of the state's activities are regulated – this allows for the conclusion that the acts regulating the matter of the criminal trial are in fact the concretisation of the constitutional norms pertaining to this matter (eg in terms of regulating the legal situation of the individual and the forms and principles of the operation of courts), thus becoming a part of constitutional law *sensu laro*.\textsuperscript{25} The Constitution of the Republic of Poland contains many provisions relating directly to the criminal trial, eg provisions

\textsuperscript{23} Marszał and Zagrodnik (n 20) 36.

\textsuperscript{24} Marszał (n 14) 40; T Grzegorczyk and J Tylman, *Polskie postępowanie karne* (Warsaw, LexisNexis, 2014) 62.

Basic Concepts

concerning the deprivation or restriction of liberty (Article 41), the right to a court (Article 45 para 1, Article 77 para 2), the presumption of innocence (Article 42 para 3), the right to a defence (Article 42 para 2), the audience of hearings (Article 45 para 2), the two-instance course of proceedings before a court (Article 176). The influence of the Polish constitution on the criminal trial is particularly important in the guarantee dimension. It is connected with the fact that the establishment of the foundations of the criminal procedural regulation on constitutional grounds means at the same time, from the negative side, the setting of impassable limits for legislative activity. The Constitution of the Republic of Poland constitutes a sui generis anchor that maintains the criminal procedural law system in a position that guarantees its stability within the scope of its core components, which are strictly connected with defining the relations between the state and the citizens at the highest normative level. The Constitution should also ensure, within the indicated scope, at least a relative immunity to waves of legislative activity in the area of penal procedural law, which are often manifestations of penal populism, threatening fundamental civil rights and freedoms, as well as standards of fair proceedings.26

European Convention on Human Rights

The ECHR constitutes an international agreement signed by the Member States of the Council of Europe on 4 November 1950, and ratified by the Republic of Poland on 19 January 1993; its rank in the hierarchy of sources of criminal procedural law is determined by the fact that it refers to the freedoms, rights and duties of citizens set out in the Constitution of the Republic of Poland, as well as to proceedings before the courts, ie a matter which currently requires ratification with the prior consent of the Sejm expressed in a statute. This determines – pursuant to Article 91(2) in conjunction with Article 241 of the Polish constitution – the precedence of the Convention as an international agreement over internal (domestic) statutes; such an international agreement ratified shall have precedence over statutes if an agreement cannot be reconciled with the provisions of such statutes.

Criminal Procedure Code

The CPC is a basic law containing provisions regulating the objectives of a criminal trial, the conditions of its admissibility, the entities participating in it, the activities aimed at achieving this objective and the course of the trial.

Criminal Code

The Criminal Code (CC) regulates the conditions of criminal responsibility for a crime, the penalties, punitive measures and other measures of criminal reaction

26 J Zagrodnik, in Zagrodnik (n 20) 56.
Sources of Criminal Procedural Law

(e.g., probationary measures) applied in connection with its commission, and the directives and principles of penalty assessment (CC General Part regulations 1–116), and also defines the basic types of criminal acts as crimes (CC Special Part regulations 117–363). The CC also regulates such issues as prescription (Articles 101–105 CC) or expungement of sentences (Articles 106–108 CC). The provisions of the General Part of the CC apply to other statutes providing for criminal liability, unless these statutes explicitly provide otherwise (Article 116 CC).

Law on the System of Common Courts (LSCC)

The Law on the System of Common Courts (LSCC) is the law that regulates the organisational structure of common courts, their tasks and bodies, and the rights and duties of judges.

Supreme Court Act

The Supreme Court Act (SCA) determines the structure of the Supreme Court, the organs of that court, the jurisdiction of the various chambers of the Supreme Court, and the rights and obligations of the judges of that court.

The last two Acts belong to a broader group of so-called system acts, which also includes Act – Law on the Prosecutor’s Office, the Law on the Bar and the Act on the Police. These Acts regulate the organisational structure, organs, and tasks of the Prosecutor’s Office, the self-government of solicitors and legal advisers, the police, as well as the rights and duties of prosecutors, solicitors, legal advisers and police officers. Acts relating to the subject matter of the criminal process also include, among others, the Act on Crown Witnesses. It is also worth noting that Polish law regulates separately the matter of penal fiscal law, i.e., the law in cases involving fiscal crimes and fiscal transgressions. Regulations concerning these matters are contained in the Penal Fiscal Code. The problem of execution of penalties, penal measures and other means of penal reaction, as well as execution of, for example, temporary arrest, is regulated in the Executive Penal Code.

Acts of a lower rank than a statute, which may be the source of criminal procedural law, shall be executive acts in the form of regulations. Regulations shall be issued on the basis of specific authorisation contained in, and for the purpose of implementation of, statutes by the organs specified in the constitution. The authorisation shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act (Article 92 (2) Constitution). In the case of criminal procedural law, the minister of justice is most often authorised to issue regulations. The regulations cannot lead to limiting the scope of rights of the litigants or serve to regulate the basis for the use of coercive measures.27

27 Marszał (n 14) 41.
In the Polish legal system, the sources of criminal procedural law are neither custom nor judicial decisions (precedents) nor the views of the criminal procedural doctrine. This does not mean that court decisions, especially those of the Supreme Court, or doctrinal views are completely irrelevant to the penal procedural sphere. They play an important role at the level of interpreting the applicable regulations in the process of applying the law.28

Procedural Grounds

The construction of procedural grounds is the foundation of the criminal trial.29 The importance of this construction is fully revealed in the background to the definition of procedural grounds, which emphasises their essential nature. Respecting the content of Article 17 § 1 CPC, we concur with the view prevailing in the Polish literature, according to which procedural grounds are factual and legal conditions, which, in accordance with the aforementioned provision (Article 17 § 1 CPC), determine the legal admissibility of a criminal trial.30 In this sense, they are conditions for the existence of a criminal trial – they condition the initiation and conduct of a criminal trial. Article 17 § 1 CPC defines them from the negative side: the occurrence of one of the circumstances specified in this provision creates a procedural obstacle that precludes the commencement or continuation of a criminal trial.31 This provision states that proceedings shall not be instituted, or shall be discontinued, when:

1. the act was not committed or there are no sufficient grounds to suspect that it was committed;
2. the act does not have the features of a prohibited act, or when it is acknowledged by the CPC that the perpetrator has not committed a criminal offence;
3. the act inflicts a minor social harm;
4. it has been established under the CPC that the perpetrator is not subject to penalty;
5. the accused is deceased;
6. the prescribed statute of limitations has lapsed;
7. criminal proceedings concerning the same act committed by the same person have been finally concluded or, if previously instituted, are still pending;
8. the perpetrator is not subject to jurisdiction of the Polish criminal courts;
9. no complaint has been filed by the authorised prosecution counsel;

29 It is worth noting that this construction was taken from the science of German criminal procedure, the creator of which is regarded to be A von Kries (see ‘Die Prezessvoraussetzungen des Reichsstrafprozesses’ [1885] no 5 Zeitschrift für Gesamte Strafrechtswissenschaft 1 et seq). He transferred the constructional assumptions of procedural grounds adopted at the level of civil procedure by O Bülow, in Die Lehre von den Prozesseinreden und die Prozessvoraussetzungen (Giessen, 1868) 5 et seq. J Goldschmidt, in Der Prozess als Rechtstage (Berlin, 1925), made an important contribution to the development of the concept of procedural grounds on the grounds of criminal procedure.
30 L Schaff, Proces karny Polski Ludowej (Warsaw, Wydawnictwo Prawnicze, 1953) 223 and n; M Cieślak, ‘O przesłankach procesowych w polskim postępowaniu karnym’ (1969) 12 PiP 960; Marszał (n 14) 143; Waltoś and Hofmański (n 28) 469; Grzegorczyk and Tylman (n 24) 175–76.
31 Grzegorczyk and Tylman (n 24) 178.
10. there is no permission obtained for prosecuting or no motion to prosecute from an authorised person, unless otherwise provided in the CPC;
11. other circumstances precluding such proceedings occur.

The distinguished procedural grounds can be classified in various ways, using different criteria that enable their more complete characterisation.

Taking into account the scope of action of procedural grounds, ie whether they act in the course of the entire trial, within the scope of the main procedural stream, or, for example, only in one of the procedural stages, the following types of grounds can be distinguished:

1. occurring only in the proceedings before the court, eg the complaint of the authorised accuser;
2. relating to both pre-trial and trial proceedings – these grounds are the most numerous; they include, for example, the statute of limitations for criminal offences, lack of a request for prosecution, and lack of the constituent elements of a prohibited act;
3. acting only in executive proceedings, eg the prescription of execution of a sentence (Article 103 CC).[^32]

Taking into account the permanence of a procedural obstacle, the consequences connected with it, caused by the existence of a procedural ground set forth in Article 17 § 1 CPC, grounds may be divided into absolute and relative ones.[^33] Absolute grounds constitute conditions for admissibility of proceedings in any procedural setting. A procedural obstacle resulting from an absolute procedural ground excludes the possibility of commencing and continuing a criminal trial both at the time of its determination and in the future, as it is impossible to change the procedural arrangement in such a way that would open the way for conducting a criminal trial despite the state of affairs creating the obstacle. Procedural grounds of this nature may include, for example, the expiration of the statute of limitations for the crime. The ending of the time period after which a criminal offence ceases to be punishable is of a final nature; there is no possibility of a reversal in time or a turning back of time, which would neutralise the ending of the indicated time period and make it possible to initiate or continue a criminal trial. Relative grounds, on the other hand, condition the admissibility of a trial only in a specific procedural setting. This means that a procedural obstacle arising from such a circumstances does not preclude the possibility of a trial against the same person for the same act in a changed procedural setting. An example of such a premise is a complaint by an authorised accuser. The filing of a complaint by an unauthorised prosecutor causes the trial (a criminal trial in the judicial stage) to be discontinued. However, it is possible to change the procedural arrangement in which the trial is inadmissible, by again filing a successful complaint by the authorised accuser, opening the possibility of proceeding against the same person for the same act, provided, of course, that the statute of limitations for the crime has not expired.

[^32]: Cieślak (n 17) 408; Marszał (n 14) 143.
[^33]: Cieślak (n 17) 409–10; Marszał (n 14) 146.
Taking into account the nature of the condition that creates a procedural obstacle, in particular the connection with substantive criminal law, it is possible to distinguish:

1. strictly procedural (purely procedural) grounds;
2. grounds anchored in substantive criminal law;
3. states of a factual nature, forming the factual premise of the criminal trial, provided for in (1), namely:
   (a) the act was not committed;
   (b) lack of sufficient grounds to suspect that it was committed; this premise coincide with the grounds for initiating pre-trial proceedings.

Against the background of this division, it should be clearly emphasised that procedural grounds are always a procedural phenomenon. This does not change the fact that some of them are clearly connected with substantive criminal law, on the basis of which they are conditions for criminal liability, eg insignificant social harm of the act or lack of the elements of a prohibited act. It is important that the procedural criminal law binds the admissibility or inadmissibility of a criminal process to them.

Although for the purposes of this book we will confine ourselves to the illustrated divisions of procedural grounds, it must be emphasized that their listing in Article 17 § 1 CPC is not comprehensive. This follows unequivocally from the content of Article 17 § 1 point 11 CPC, which provides for the qualification in the category of procedural obstacles of conditions excluding criminal prosecution other than those listed in points 1–10 of this provision. An example of such a condition may be abolition, provided for in amnesty laws.

Verification of the admissibility of a criminal trial through the prism of procedural obstacles is the duty of the procedural authorities. This obligation extends to the entire proceedings and follows not only from the content of Article 17 § 1 CPC, but also, for example, from Article 339 § 3(1) CPC concerning preliminary examination of the case before it is referred to the main hearing, and from Article 439 § 1(9) CPC defining procedural defects consisting in ruling despite the existence of procedural obstacles specified therein and applicable in appeal proceedings and – in connection with Articles 523, 539a § 3 and 542 § 3 CPC – in extraordinary appeal proceedings. Determination of the existence of a procedural obstacle prior to the commencement of a criminal trial shall result in a refusal to commence the trial. If such determination occurs in the course of a criminal trial, the trial shall, as a rule, be discontinued. In pre-trial proceedings and in judicial proceedings until the commencement of judicial examination, the ruling in this regard takes the form of a decision. After the institution of judicial examination, the court shall render a judgment about discontinuance of the proceedings (Article 414 § 1, first sentence). An exception applies to the circumstances described in Article 17 § 1 points 1 and 2. If these are found, the court shall render a judgment of acquittal, unless the perpetrator was in a condition of insanity at the time they committed the act.

34 See Cieślak (n 17) 411–13; Marszał (n 14) 146–47; Waltoś and Hofmański (n 28) 472–83.
35 Marszał (n 14) 148.
36 If the court finds that it lacks jurisdiction, it shall not discontinue the proceedings, but it shall refer the case to a court of competent jurisdiction or to another body (Art 35 § 1).
The Criminal Trial Process

A criminal trial is a social phenomenon that undergoes dynamic development and has a beginning, a course and an end. In the course of criminal proceedings, which for the most part concern the issue of criminal responsibility for the committed crime in the most general terms, the following procedural stages can be distinguished, taking into account the functions they perform.

There is no unanimity in criminal trial doctrine as to whether appellate proceedings can be considered as a separate procedural stage. Its distinctiveness is supported by the fact that appellate proceedings primarily perform the control function in relation to the ruling issued in the first instance. Within the framework of the distinct procedural stages one can distinguish smaller separate sections, namely procedural phases, and then further, even smaller stages, in the form of sub-phases of the criminal trial. The most important procedural phases and sub-phases are discussed further within the framework of a discussion of the course of the criminal trial in individual stages, leading to a final resolution of the issue of criminal responsibility.

The first three fundamental procedural stages, in which exploratory activities aimed at the correct determination of the issue of criminal responsibility are undertaken, determine the field of action of the interaction between the procedural entities. This interaction is driving force is the activity of procedural subjects. Referring the concept of interaction to the mutual relations between these subjects, we can say that the interaction is based on opposition or cooperation. Contradictions are revealed along the line of relations between the prosecution and the defence. These give a dialectical dimension to procedural cognition (the cognitive process in criminal proceedings), which refers to a thought pattern that provides – in its simplest formulation – a transition from a thesis through an antithesis to a synthesis, which should be combined with the enrichment of the state of knowledge about a criminally relevant event, which the settlement of criminal liability is supposed to concern. Cooperation as another manifestation of interaction between procedural subjects which becomes apparent primarily at the level of relations between criminal prosecution authorities (the prosecution) and the court. An example of this in pre-trial proceedings can be the use of provisional detention by the court at the request of the prosecutor.

Interaction can also be considered a feature of the criminal trial, having in mind the system of interrelations between the various procedural stages, which is reflected in the model formation of the course of the criminal trial during these stages. In this sense, in connection with the cognisance of the case, the interaction occurring between the pre-trial proceedings and the main proceedings is of fundamental importance in the criminal trial.

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37 See Cieślak (n 17) 53–54; Marszał (n 14) 492; Waltoś and Hofmański (n 28) 487–88.
38 See Cieślak (n 17) 54–55; Marszał (n 14) 493.
39 Cieślak (n 17) 53–54.
40 See in German doctrine: J Meyer, Dialektik im Strafprozess (J.C.B. Mohr (Paul Siebeck, Tubingen, 1965) 45; see also Zagrodnik (n 1) 36–40.
41 Zagrodnik (n 1) passim.
Terminological Issues

A significant difficulty when it comes to an attempt to present the Polish criminal process in an international, Anglophone dimension results from a specific net of procedural terms, which is reflected on the grounds of criminal procedural regulation. At this point we can only show this specificity in a few aspects, namely the terminology corresponding to different forms of procedural decisions, types of procedural time limits and selected features of procedural actions. In the following chapters we will elucidate various aspects of the procedural status of the person against whom the actions of criminal prosecution are directed (the accused sensu largissimo), evidentiary actions (explanations of the accused, testimonies of witnesses) and appeal measures.

Types of Procedural Decisions

Procedural decisions are imperative statements of the will of the bodies that direct the criminal process, which are binding on the parties and other participants in the proceedings. The name ‘procedural decision’ is an umbrella term covering two groups of procedural decisions, namely rulings and orders.

Rulings are the most important procedural decisions. They do not constitute a uniform category. They are divided primarily into judgments and decisions (Article 93 § 1 CPC). Rulings also include resolutions issued by the Supreme Court in response to a question from an appellate court concerning the clarification of a legal issue requiring a fundamental interpretation of a statute (Article 441 § 3 CPC).

In pre-trial proceedings, a ruling may only take the form of a decision. At this procedural stage, decisions shall be issued by a public prosecutor and another authorised body (eg the police), and in cases provided for in the CPC, by the court (Article 93 § 3 CPC). In some cases, a decision issued by a non-prosecutorial criminal prosecution body, eg the police, requires the approval of the public prosecutor in order to be effective. This applies, for example, to a decision refusing to initiate or discontinue pre-trial proceedings (Article 325e § 2 CPC). Until approval, the police decision remains incomplete, as it has no procedural effect. Upon approval, the decision is treated as if it had been issued by the prosecutor.

In court proceedings, a decision may take the form of a judgment or a decision. It follows from Article 93 § 1 that unless the CPC requires a judgment, the court shall issue a decision. In light of this regulation, it is important to determine the cases in which it is necessary for the court to issue a judgment. Two groups of such cases can be identified. First, the court shall issue a judgment when it decides on the subject matter of the trial, ie on the guilt or innocence of a certain person (when it decides on the criminal responsibility of a certain person). This follows indirectly from

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42 Cieślak (n 17) 51; Marszał (n 14) 288; Waltoś and Hofmański (n 28) 46.
Article 42(3) of the Polish constitution, which provides that everyone shall be presumed innocent of a charge until their guilt is determined by the final judgment of a court. The judgment deciding the subject of the trial may be, in its content, a judgment of conviction, acquittal or conditional discontinuance of criminal proceedings. The second of the indicated groups of cases concerns the establishment of one of the procedural grounds (procedural obstacles) described somewhat above, set forth in Article 17 § 1 CPC. The form of the ruling that corresponds to this establishment is determined by the state of progress of the criminal trial. Upon commencement of judicial examination, the court shall render a judgment deciding upon such discontinuance of the proceedings. If, however, it transpires that the circumstances (procedural obstacles) described in Article 17 § 1(1) and (2) CPC have occurred, the court shall render a judgment of acquittal, unless the perpetrator was in a condition of insanity at the time they committed the act. In the latter case, a judgment discontinuing the proceedings shall be rendered (Article 414 § 1 CPC). Apart from the cases described above, court rulings take the form of decisions. 

Exceptionally, in situations provided for in the CPC, decisions may also be issued by a court clerk (referendarz) (Article 93a § 1 CPC). Such decisions are declaratory in nature, confirming a certain state of affairs, eg when the court clerk (referendarz) discontinues proceedings following the prosecutor’s abandonment of the charge in question (eg Article 57 § 2, Article 60 § 4 CPC).

Next to the rulings, the second group of procedural decisions are – as established above – orders. These are usually issued in cases of minor importance. Sometimes, however, they can directly affect the course of a criminal trial, eg in the case of an order refusing to accept a complaint against a decision to discontinue criminal proceedings or refusing to accept an appeal against a judgment. The issuance of the aforementioned orders results in the decisions appealed against becoming final and, consequently, in the termination of the criminal trial. In court proceedings, whether a procedural decision should take the form of a decision or an order is determined by the status of the authority authorised to issue it. If it is up to the court to issue a decision, a ruling is always required. The use of the verb ‘to order’ in relation to the court does not therefore mean that it can issue an order. A decision takes the form of an order if the president of the court, the chairman of a division, the presiding judge of a panel of judges, or an authorised judge is authorised to issue the decision (Article 93 § 2 CPC). In cases defined in the CPC, a court clerk may issue orders (Article 93a § 1 CPC). For example, a court clerk may issue an order for the appointment of a public defender (Article 81 § 1 CPC). In pre-trial proceedings, orders are issued by the prosecutor or other authorised body (Article 93 § 3 CPC). Decisions of law enforcement agencies take this form if it does not follow from the provisions of the CPC that the resolution of a particular issue should take the form of a decision.

The diversity of forms of procedural decisions translates to a significant extent into a diversity of means of appeal for their control. Judgments may be appealed against
by way of an appeal. Decisions and orders may be appealed against by means of a complaint. Apart from that, orders issued by the presiding judge at the main trial may be contested before the adjudicative panel, unless the rulings are issued by one judge (Article 373 CPC). If the order of the presiding judge is contested, a ruling must be issued by the court. Decisions and orders issued by a court clerk are subject to objection. Should an objection be filed, the decision or order shall cease to be valid (Article 93a § 3 CPC). As a consequence of the filing of an objection, the decision must be issued – depending on whether it takes the form of an order or a decision – by the court clerk or the court.

Characteristics of Procedural Actions

Looking at procedural actions from the perspective of compliance with the law and the legal consequences of failure to comply with this requirement, the following features can be distinguished: admissibility, effectiveness, defectiveness, validity and legitimacy.

Admissibility of a procedural act is connected with the legal possibility of performing the act in the light of the CPC regulations. An action that is not prohibited by these provisions is admissible. Taking a different perspective, procedural acts that are prohibited by the provisions of the law are considered inadmissible. ‘Prohibition’ may result from an express prohibition to perform a certain action or from a lack of entitlement, which may be established by inference a contrario based on the scope of the entitlement granted by law to perform an action of a certain type (eg the scope of the entitlement to file a complaint set forth in Article 459 § 1 and § 2 CPC).

An effective procedural act takes place when the act produces the effects intended by the acting party, as specified in the CPC provisions. As a rule, the ineffectiveness of an action is a consequence of the failure to fulfil all the conditions of a given action that determine its effectiveness. It is assumed that ineffectiveness is the property of an inadmissible action performed by a litigant or its representative. It can be concluded on this basis that admissibility and effectiveness are attributes of a procedural action taken by a party or its representative which are necessary for the action to have procedural effects provided for in the CPC regulations.

The defectiveness of a procedural action is characterized by actions performed not in accordance with the requirements arising from the provisions of the CPC. A defect in an action may be reformed (cured). Reform means healing (correction) of the defective action with retroactive effect. Reformed action is treated as if it was correct from the beginning (the defect of this action is treated as null and void). Remedial effects may result from the force of law (eg in connection with an amendment to the act as a result

48 See ch 8.
50 Marszał (n 14) 291 et seq; Grzegorczyk and Tylman (n 24) 388–95; Waltoś and Hofmański (n 28) 50–63.
51 Grzegorczyk and Tylman (n 24) 389.
52 Marszał (n 14) 291–92.
53 Grzegorczyk and Tylman (n 24) 391–92.
54 Grzegorczyk and Tylman (n 24) 389; see also Waltoś and Hofmański (n 28) 54–56.
of which a previous defective action loses its significance) or from the initiative of the parties or another participant of the process (eg as a result of supplementing deficiencies of the pleading, or repetition of the action by the procedural body). Conversion of an act should be distinguished from reform. The conversion consists in producing, by means of one act, effects characteristic not only of the act itself, but also of another act. A prime example of the conversion of an action is the filing of an appeal against a judgment within the seven-day period provided for filing a motion for a written statement of reasons for the judgment, which produces the effect proper to the said motion, even though it was not filed (Article 423 § 1 CPC).

Justification and unfoundedness are features of procedural actions related to their substantive assessment. For example, the unfoundedness of an action may result in the discontinuance of a criminal trial in the phase preceding the main hearing when it concerns the indictment (charge) and is of a manifest nature (Article 339 § 3 (2) CPC).

Invalidity provides a criterion for evaluating procedural acts adopted on the basis of a theoretical concept, the main idea of which is that in the case of particularly serious violations of law, an act should be considered invalid from the moment of its execution (ex tunc). This concept is not reflected in the current CPC, which means that actions affected by even the most serious violations of law remain valid in the eyes of the law.

An important feature of actions taking the form of judgments is validity, which is a measure of the stability of these procedural decisions. Validity means the state in which a decision is final, ie when it constitutes the ‘last word’ in a criminal trial. Two types of validity should be considered: formal validity and substantive validity. Formal validity means the state of unchallengeability of a decision by means of an ordinary appeal measures, ruling out the continuation of a given criminal trial. Substantive validity is in a sense an effect of formal validity. This effect can only be associated with rulings ending proceedings against a specific person for a specific act. The essence of substantive validity is the ne bis in idem prohibition. As long as a substantively valid judgment is in force, it prohibits instituting or continuing proceedings against a designated person for a specific act. Revocation of a final judgment shall cause the prohibition arising from substantive validity to cease.

Procedural Time Limits

Procedural time limits serve primarily to ensure the efficient conduct of a criminal trial. The CPC uses the word ‘term’ in several senses. First, this term serves to define a period of time, distinguished by its beginning and end, in which a certain action can be taken, eg an appeal filed (Article 445 § 1 CPC),

55 Marszal (n 14) 293–94; Grzegorczyk and Tylman (n 24) 389–91.
56 Grzegorczyk and Tylman (n 24) 392; see also Waltoś and Hofmański (n 28) 57–58.
57 Grzegorczyk and Tylman (n 24) 395.
58 Marszal (n 14) 321–22.
59 ibid 324.
60 Grzegorczyk and Tylman (n 24) 420; Waltoś and Hofmański (n 28) 63.
a cassation appeal made against a defendant (Article 524 § 3 CPC) or for filing the expert opinion.

Secondly, the term ‘time limit’ refers to the designation of the final moment in the course of a criminal trial at which, at the latest, an act may be performed, eg by indicating the moment when the judicial examination is opened or closed (Articles 12 § 3, 41 § 2, 54 § 1 CPC).

Thirdly, the CPC provides for time limits for the use of coercive measures, defining the temporal framework for the admissibility of their use, such as the time limits for provisional detention set out in Article 263 CPC.

Fourthly and finally, the term ‘time limit’ is used in the context of the time of commencement and sometimes continuation of the trial (eg Articles 353 § 1 and 2, 402 § 1, 404 § 2 CPC). 61

The first of the above meanings of ‘time limit’ is of fundamental importance and will be discussed in more detail.

Time limits in this sense may be statutory time limits, if they are specified in the provisions of a statute, and may be set by the procedural authority, if it is up to this authority to determine the time within which a certain action should be performed, eg preparation of an opinion. 62

Statutory time limits are the most commonly encountered type, and can be classified in various ways. At the most general level, one can distinguish between decisive and non-decisive terms, also referred to as instructional or orderly terms. The criterion allowing for a distinction between these two categories is whether the lapse of a given time limit produces procedural effects, particularly the inability to effectively perform a given action after the deadline. 63 Such effects occur in the case of the first category of statutory time limits. Time limits falling into the second category (instructional time limits) do not entail procedural consequences if they are exceeded, and the procedural act for which they are provided may be effectively performed after the expiry of the time limit. As a rule, they are addressed to the procedural authorities 64 and are intended to stimulate their efficient operation. Their violation can have extraprocedural consequences, namely in the area of disciplinary liability, if the failure to meet a deadline is the fault of a particular authority. Examples of these time limits are deadlines for providing a statement of reasons for decisions (Article 98 § 2 CPC) and statement of reason for judgments (Article 423 § 1 CPC) or the deadline for investigations (Article 307 § 1 CPC).

Decisive time limits can be further classified by distinguishing:

1. final time limits (*terminy zawite*);
2. preclusion time limits (*terminy prekluzyjne*);
3. other decisive time limits. 65

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61 Marszał (n 14) 296–97.
62 ibid 297.
63 ibid 297–98; Grzegorczyk and Tylman (n 24) 426.
64 As an exception, instructional time limits may be addressed to the parties. An example of such a deadline is the seven-day deadline that is provided in Art 338 § 1 for submitting motions to take evidence, which runs from the time the indictment is served on the accused. Failure to submit such motions within the indicated time limit shall not preclude their later submission during the proceedings.
65 Marszał (n 14) 297.
A procedural action effected after the final time limit has passed shall be without legal effect. The time limits for lodging appeal measures are final, as shall also be time limits recognised as such under the CPC (Article 122 § 2 CPC). This is also the nature of time limits that are intended to have final effect, even though the CPC does not expressly recognise them as final (Article 120 § 2 CPC). Time limits that fall into this group are subject to reinstatement under conditions that are further specified.

Preclusion periods are characterised, similarly to final time limits, by the fact that a procedural act performed after the deadline is ineffective.\(^{66}\) They differ from final time limits in that they cannot be reinstated. Thus they can be said to be more categoric (decisive). The preclusionary character of a deadline (its non-reversibility) is determined by the normative context, from which it must follow that in the case of a given deadline there is no possibility of performing an action after its expiration.\(^{67}\) An example of a preclusionary time limit is the one-month time limit for an auxiliary prosecutor to file a subsidiary indictment in place of the public prosecutor (Article 55 § 1 CPC).

A subgroup of other decisive time limits consists of deadlines whose violation entails certain procedural consequences but does not render a procedural act ineffective.\(^{68}\) The effect of exceeding them is, for example, the obligation to conduct the trial from the beginning, which arises if the time limit for the interruption in a trial (42 days) or if the time limit of adjournment of the rendering of a judgment (14 days) are exceeded (Articles 402 § 3 and 411 § 1 and 2 CPC).

The time limits are calculated according to the rules set out in Article 123 CPC. In accordance with this provision, the day from which a time limit is being calculated shall not be included in the time limit (§ 1). This means that where a time limit is calculated from the day on which an order is published, the day on which that publication takes place shall not be included. If a time limit is defined in weeks, months or years, the time limit shall lapse on the day of the week or month corresponding to the commencement of such a time limit; if a given month has no such day, then the time limit shall lapse on the last day of such a month. Where a time limit ends on a day statutorily recognised as a non-working day or on a Saturday, the action may be undertaken on the next day that is not a non-working day or a Saturday (§ 3). Article 127a CPC provides for the suspension of the time limit for a party to proceedings if a procedural action, in order to be valid, has to be conducted by a defence counsel or an attorney. This suspension lasts until the petition for legal assistance in this scope is examined. If a defence counsel or attorney is appointed ex officio, the time limit for conducting the action by the appointed legal representative shall be calculated as of the date of serving on them the decision or order on the appointment.

It should be emphasised that a pleading filed mistakenly with a court, public prosecutor, body of the police or another investigative body lacking jurisdiction in the matter prior to the lapse of the time limit shall be treated as one properly filed (Article 125 CPC).\(^{69}\) The filing does not have to be made directly to a specific procedural body. The time limit is also observed if, before its expiry, for example a letter was posted.

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\(^{66}\) Grzegorczyk and Tylman (n 24) 424–25.
\(^{67}\) ibid 424.
\(^{68}\) Marszał (n 14) 298.
\(^{69}\) Supreme Court Decision, 27 April 2011, III KZ 16/11, Lex no 1144101.
at an office of an entity delivering correspondence in the European Union or at a Polish consular office (Article 124 CPC).

As has already been determined above, a final time limit can be reinstated. Reinstating a final time limit has a restitutioinary effect, as it results in an act performed after expiration of a time limit being deemed to have been performed in compliance with the time limit.⁷⁰ The conditions of reinstating a final time limit are set forth in Article 126 CPC, which provides that if a failure to meet the final time limit took place for reasons beyond the control of a party, the party may, within seven days from the day on which the obstacle has been removed or expired, submit a petition to have the time limit reinstated, at the same time effecting the action which was to be effected within the previously applicable time limit; the same provision shall apply to persons who are not parties to the proceedings. Reasons beyond the control of the party or the person who is not party to the proceedings are obstacles for which they are not responsible.⁷¹ In practical terms, justifying the occurrence of an obstacle independent of the entity filing a motion requesting a reinstatement of a time limit consists in proving due diligence, which is tantamount to denying the existence of circumstances in the light of which the failure to observe a time limit could be treated as a sign of recklessness or negligence. An application for restoration of a final time limit shall be made before the authority before which a given act should have been performed within the time limit. Such a motion shall not stop the execution of the ruling, although the body with which it has been filed or a body appointed to examine the appeal measure may suspend the execution of the ruling; a refusal to suspend shall not require a statement of reasons (Article 127 CPC). The decision on reinstatement shall take the form of a decision (Article 126 § 2 CPC). A refusal to reinstate a time limit may be contested (Article 126 § 3 CPC), whereas a decision to reinstate a time limit is not subject to complain. It may, however, be subject to review in the appellate instance. If it is established that the appeal has been accepted as a result of an unjustified reinstatement of the time limit, the appellate authority shall leave it unheard (Article 430 § 1 CPC).⁷² This decision may be contested before another equivalent panel of an appellate court, unless it has been issued by the Supreme Court (Article 430 § 2 CPC).

Form of Procedural Actions

In terms of the form of procedural actions, two types of interdependence are revealed in relation to the previously established main purpose of a criminal trial, namely the correct – ie the one that corresponds to the idea of substantive justice – settlement of the issue of criminal responsibility of a given person for the act he/she is charged with. On the one hand, from the perspective of achieving this goal, the form of procedural actions cannot constitute a superior value.⁷³ On the other hand, the forms of procedural

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⁷⁰ Marszał (n 14) 300.
⁷² ibid 596.
⁷³ S Śliwiński, Proces karny. Zasady ogólne (Warsaw, Gebethner i Wolff, 1948) 420.
acts specified in the binding regulations are subordinated to the fact that the criminal trial constitutes a compact sequence of acts, leading in an optimal way to the realisation of its main goal.\textsuperscript{74}

For a main hearing, the principle of holding an oral hearing applies (Article 365 CPC). However, it should not be overlooked that actions taken during the trial are at the same time recorded in writing (Article 143 § 1(11) CPC) and are sometimes recorded by means of video and sound recording equipment (Article 147 § 2b CPC). This should not be seen as a sign of excessive procedural formalism. It is dictated by reasons of legal certainty and serves to record in the case file as precisely as possible the content of the statements made, especially evidentiary statements, which constitute the basis for the factual findings underlying the judgment.\textsuperscript{75} The written form of procedural actions is obligatory if it clear follows from applicable regulation.\textsuperscript{76} The group of actions that deserve to be distinguished are appeal measures, ordinary and extraordinary, which need to be made in writing (Article 428 § 1 in connection with Articles 518, 539–40 and 545 CPC). To the extent that the CPC does not require a specific form of procedural actions, the parties and other entities entitled to take part in the procedural action have the right to choose the form of their motions and other statements, and they may do this in writing or orally into the minutes (Article 116 CPC).

A procedural action performed in writing must meet the general requirements for a pleading, which – pursuant to Article 119 § 1 CPC – include:

1. designation of the body to which it is addressed and of the case to which it relates;
2. an indication and the address of the person filing the pleading, as well as – in the first pleading filed in the case – the telephone number, the fax number and the email address, or a statement on their non-possession;
3. the contents of the motion or statement, with a statement of reasons thereof, if needed;
4. the date and the signature of the person filing such a pleading.

If a person is unable to sign, eg because of a hand injury, another person authorised by them shall sign for them and indicate the reasons for doing so (Article 119 § 2 CPC). The general conditions of a pleading are sometimes supplemented by special provisions which provide for additional requirements to be met by a pleading of a certain type.\textsuperscript{77} Referring again to the example of appeal measures, it may be noted that it is incumbent on each applicant to indicate the contested decision or finding, ie to define the limits of the complaint, and to state what he/she demands, ie to formulate the appeal request (Article 427 § 1 CPC).

Pursuant to Article 120 § 1 CPC, if a pleading does not meet the formal requirements set forth in Article 119 or in special provisions, and the nature of the defect prevents further processing of the pleading or the defect consists in failure to pay the applicable fees or to submit an authorisation to undertake a procedural action, the person who filed that pleading shall be requested to remedy the defect within seven

\textsuperscript{74} Cieślak (n 17) 226.
\textsuperscript{75} ibid 227.
\textsuperscript{76} Marszał (n 14) 294.
\textsuperscript{77} ibid 295.
days. The existence of such a defect prevents further processing of the pleading, making it substantially impossible to examine its merits.\textsuperscript{78} The absence of the signature of the person filing the pleading may be regarded as such a defect.\textsuperscript{79} It does not include, for example, failure to provide the opposing parties with a sufficient number of copies of the pleading because that is a technical defect which does not affect the ability to respond to the substance of the pleading lodged.\textsuperscript{80} If the defect in the pleading is remedied within the time limit specified above, the pleading shall take effect from the day on which it is filed. If the defect is not corrected within the prescribed time limit, the pleading shall be considered null and void, and the person filing it shall be advised thereof upon being served the summons (Article 120 § 2 CPC).

An example of mitigation of excessive procedural formalism is the standard according to which the significance of a procedural action shall be evaluated pursuant to the contents of the statement filed (Article 118 § 1 CPC). An erroneous designation of a procedural action and, in particular, of an appeal measure shall not deprive such an action of its legal significance (Article 118 § 2 CPC). It follows from the cited provisions that in terms of effective performance of a procedural action it is not its correct designation that matters, but the actual content of the statement making up the action.\textsuperscript{81} Thus, for example, if the defendant files in timely fashion a pleading marked as a complaint against a judgment served upon him/her with a statement of reasons, it should be treated as an appeal initiating an appellate control of the judgment.

\textsuperscript{78} Supreme Court Decision, 20 April 2017, II KZ 8/17, Lex no 2281252; see Hofmański et al (n 72) 592–93 (2004).

\textsuperscript{79} Supreme Court Decision, 23 October 2013, IV KZ 55/13, Lex no 1412343.

\textsuperscript{80} Supreme Court Decision, 8 November 2000, II KZ 120/00, OSNKW 2001, no 1–2, pos 11; J Zagrodnik, \textit{Obrońca i pełnomocnik w procesie karnym i karnym skarbowym} (Warsaw, Wolters Kluwer, 2020) 471.

\textsuperscript{81} See, for example, Supreme Court Judgment, 1 April 2003 r, III KKN 155/01, Lex no 77454; Supreme Court Decision 13 January 2004, III KZ 66/03, Lex no 185581.