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Guarantees of a fair criminal trial in Polish and international law

Gwarancje rzetelnego procesu karnego w prawie polskim i międzynarodowym

Abstract

The article provides an in-depth analysis of the guarantee of a fair criminal trial, presenting it as the foundation of justice and protection of individual dignity in the face of state *ius puniendi*. The author derives contemporary standards from Roman legal maxims, combining them with the Polish constitutional order and international requirements, in particular Article 6 of the European Convention on Human Rights. The text discusses in detail two key pillars of fairness: the right to defence and the presumption of innocence, analysing their practical implementation under the Code of Criminal Procedure. An important element of the study is the reference to the case law of the Constitutional Tribunal and the European Court of Human Rights, which allows the dynamics of the protection of the rights of the accused to be highlighted.

Keyword: fair trial, right to defence, presumption of innocence, Constitution of the Republic of Poland, European Convention on Human Rights, ECHR case-law, procedural, *in dubio pro reo*.

Streszczenie

Artykuł stanowi pogłębioną analizę gwarancji rzetelnego procesu karnego, ukazując go jako fundament sprawiedliwości i ochrony godności jednostki w obliczu państwowego *ius puniendi*. Autor wywodzi współczesne standardy z rzymskich *maxim* prawnych, łącząc je z polskim porządkiem konstytucyjnym oraz wymogami międzynarodowymi, w szczególności z art. 6 Europejskiej Konwencji Praw Człowieka. Tekst

szczegółowo omawia dwa kluczowe filary rzetelności: prawo do obrony oraz zasadę domniemania niewinności, analizując ich praktyczną realizację na gruncie Kodeksu postępowania karnego. Istotnym elementem opracowania jest przywołanie orzecznictwa Trybunału Konstytucyjnego oraz Europejskiego Trybunału Praw Człowieka, co pozwala ukazać dynamikę ochrony praw oskarżonego.

Słowa kluczowe: rzetelny proces karny, prawo do obrony, domniemanie niewinności, Konstytucja RP, Europejska Konwencja Praw Człowieka, orzecznictwo ETPC, *in dubio pro reo*.

Introduction

At the heart of every civilised legal system lies the idea of justice. As G. Radbruch noted, if positive law leads to injustice, it should give way to justice, calling it statutory injustice.¹ However, justice, especially in the criminal sphere, is not possible without an equally fundamental pillar: the right to a fair trial. This is not just a technical set of rules, it is a fundamental guarantee of human dignity and a necessary condition for the state to be able to effectively and legally apply *ius puniendi*, whose roots can be found in Roman law.

When discussing Roman law, it is impossible not to note that ensuring fair trial principles is extremely important, not only now, but also for Roman jurists. It was in Roman law that a number of rules were formulated which, in the form of articles in codes, have remained with us to this day. Maxims such as *Nemo iudex in causa sua*, *Audiatur et altera pars*, *in dubio pro reo*, *Nulla crimen sine lege*, *nulla poena sine lege* are the foundation of legal systems around the world.

These maxims are not only a link between current regulations and Roman law, but also the glue that holds together the entire structure of criminal proceedings, the principles of which, apart from the code, can also be found in the Constitution and in international law.

¹ G. Radbruch, *Philosophy of Law*, Warsaw 2012, cf. Appendix 3, "Statutory Unlawfulness and Extra-Statutory Law," pp. 244-254; originally G. Radbruch, *Rechtsphilosophie*, Stuttgart 1956, first published in „Süddeutsche Juristen-Zeitung” 1946, No. 1, pp. 105-108.

Guarantees of a fair trial in the Polish Constitution of 1997

The Polish Constitution of 1997, as the foundation of the Polish legal system, offers guarantees for a fair criminal trial. These guarantees are provided in Articles 42 and 45. Article 42, paragraph 1, states that in order for someone to be punished for an act, it must have been committed at the time when it was punishable by law. However, it allows for the consideration of international law.

The second paragraph of the same article states: ‘Everyone against whom criminal proceedings are conducted has the right to defence at all stages of the proceedings. In particular, they may choose a defence counsel or, under the terms specified in the law, use a defence counsel appointed by the court.’² Here, the Constitution defines the right to defence in criminal proceedings. This provision covers the right to defence in two aspects. In formal terms, this means the possibility of acting through a chosen defence counsel or one appointed *ex officio*. In material terms, it means enabling the person against whom the proceedings are being conducted to influence them, for example by participating in hearings or providing explanations. In her commentary on the Constitution, Monika Florczak-Wątor expresses the view that a literal reading of this paragraph is incorrect.³ She notes that *ad personam* proceedings commence from the moment charges are brought. Until then, *in rem* proceedings are ongoing. According to the author, this view is contrary to Article 2 of the Constitution. The correct interpretation therefore refers to any repressive proceedings that are not only pending against a specific person, but may also be conducted. The right to defence is not only valid until a final judgment is issued. As the Constitutional Tribunal notes in its judgment K 18/03 of 3 November 2004: ‘This right is enjoyed by everyone from the moment criminal proceedings are instituted against them (in practice, from the moment charges are brought) until a final judgment is issued, and also covers the enforcement stage.’⁴

‘Everyone shall be presumed innocent until proven guilty by a final court judgement.’⁵ This paragraph of the Constitution guarantees the

² The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended).

³ M. Florczak-Wątor, [in:] P. Tuleja (ed.), *Constitution of the Republic of Poland. Commentary*, 2nd ed., Warsaw 2023, art. 42.

⁴ Constitutional Tribunal judgment of 3 November 2004, K 18/03, OTK-A 2004, No. 10, item 103.

⁵ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended).

presumption of innocence, which gives this institution a special status in the Polish legal system. As Paweł Sarnecki notes in his commentary, the presumption of innocence applies not only to the accused, but also to a person suspected of committing an act or to a person in respect of whom the commission of an act cannot be ruled out.⁶ The above statement is an example of a broad understanding of the presumption of innocence in subjective terms. However, this institution should also be viewed broadly in terms of its subject matter. In its judgment SK 17/00 of 11 September 2001, the Tribunal noted that the guarantees in Chapter II of the Constitution (including the presumption of innocence) apply to all repressive proceedings, which should be understood as proceedings: ‘the purpose of which is to subject a citizen to some form of punishment or sanction’.⁷ This view is strongly established in the case law of the Constitutional Tribunal. The Tribunal ruled similarly, for example, in judgments K 41/97 of 8 December 1998⁸ and SK 11/99 of 16 November 1999.⁹ As noted by the Constitutional Tribunal in its judgment K 22/00 of 27 February 2001, the principle of the presumption of innocence is addressed primarily to the prosecutor and the adjudicating authorities.¹⁰ Such a broad interpretation of the principle of the presumption of innocence makes it appropriate to conclude that it is protective in nature. The Constitutional Tribunal took the same position in its judgment P 1/99 of 16 May 2000.¹¹

The first paragraph of Article 45 of the Constitution states that: ‘Everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and independent court.’ The principle of the right to a court, as expressed in this way, consists of three elements, as noted by the Constitutional Tribunal in its judgment K. 28/97 of 9 June 1998:

“1) the right of access to a court, i.e. the right to initiate proceedings before a court – a body with specific characteristics (independent, impartial and autonomous); 2) the right to an appropriate court procedure, in accordance with the requirements of justice and openness; 3) the right

⁶ P. Sarnecki, [in:] L. Garlicki, M. Zubik (eds.), *Constitution of the Republic of Poland. Commentary. Volume II*, 2nd ed., Warsaw 2016, art. 42.

⁷ Constitutional Tribunal ruling of 11 September 2001, SK 17/00, OTK 2001, No. 6, item 165.

⁸ Constitutional Tribunal judgment of 8 December 1998, K 41/97, OTK 1998, No. 7, item 117.

⁹ Constitutional Tribunal judgment of 16 November 1999, SK 11/99, OTK 1999, No. 7, item 158.

¹⁰ Constitutional Tribunal judgment of 16 November 1999, SK 11/99, OTK 1999, No. 7, item 158.

¹¹ Constitutional Tribunal ruling of 16 May 2000, P 1/99, OTK 2000, No. 4, item 111.

to a court judgement, i.e. the right to obtain a binding decision on a given case by a court.”¹² The Tribunal shared this position, also in its judgement SK 12/99 of 10 July 2000.¹³

The initiation of proceedings before a court may take various forms. The Constitution does not specify *expressis verbis* the forms of initiating proceedings before a court. The burden of determining the manner of initiating proceedings, as well as the form of the proceedings themselves, rests with the legislator. Although the right to a court should be as broad as possible, it is not unlimited. The rules governing the procedure and the manner of its initiation must provide for certain requirements that must be met. In their commentary, P. Grzegorzczuk and K. Weitz cite, among other things, legal capacity, capacity to sue and be sued, standing to sue, national jurisdiction, and formal requirements for pleadings as examples.¹⁴ Additional requirements characterise access to the second instance, such as the deadline for filing an appeal. Although the above-mentioned requirements *prima facie* restrict access to the courts, in reality they enable the legal system to function due to other values respected in a democratic state governed by the rule of law. The same opinion was expressed by the Constitutional Tribunal in its judgment K 21/99 of 10 May 2000.¹⁵ In the above ruling, the Tribunal stated that procedural requirements constitute a significant and real restriction of the right to a court, but they are necessary. Formal rigours set the limits of the right to a court, which enable its effective implementation. In its judgment, the Tribunal stated that it is necessary to examine whether the restrictions are excessive. Article 45(1) does not cover the right to appeal to the Supreme Court, which is possible under an extraordinary appeal. The legislator is therefore not obliged to ensure that a case is heard by the Supreme Court. This view was expressed by the Constitutional Tribunal in its judgment SK 23/02 of 6 October 2004.¹⁶ It should be added, however, that to the extent that the legislator has provided for access to the Supreme Court, Article 45(1) of the Constitution applies to the same extent as in the case of access to a court of second instance. However, the specific nature of proceedings before the Supreme Court should

¹² Constitutional Tribunal judgment of 9 June 1998, K 28/97, OTK 1998, No. 4, item 50.

¹³ Constitutional Tribunal ruling of 10 July 2000, SK 12/99, OTK 2000, No. 5, item 143.

¹⁴ P. Grzegorzczuk, K. Weitz, [in:] M. Safjan, L. Bosek (eds.), *Constitution of the Republic of Poland. Volume I. Commentary on Articles 1–86*, 1st ed., Warsaw 2016, art. 45.

¹⁵ Constitutional Tribunal ruling of 10 May 2000, K 21/99, Legalis No. 47842.

¹⁶ Constitutional Tribunal ruling of 6 October 2004, SK 23/02, Legalis No. 65125.

be considered in the context of the entire legal system. The legislator limits access to the Supreme Court due to the principle of speed, efficient operation of the Supreme Court and enabling efficient supervision of the jurisprudence of common and military courts. This view was expressed by the Tribunal in its Decision Ts 239/12 of 12 June 2013.¹⁷

As previously indicated, the obligation to establish an appropriate court procedure rests with the legislator. The requirement of justice is closely linked to Article 2 of the Constitution, which expresses the principle of procedural justice. Article 45 expressly states only that the case should be heard openly and fairly without undue delay.

The guarantee of the impartiality of the court is seen, among other things, in the openness of court hearings. As a rule, hearings are open to the public. However, the second paragraph of Article 45 allows for the exclusion of the openness of the hearing, giving the following reasons: morality, state security and public order, and the protection of the private life of the parties or other important private interests. During the Covid-19 pandemic, the right to restrict openness was allowed in order to protect human life and health (judgments of the Supreme Administrative Court II OSK 1652/21 of 12 April 2022¹⁸ and I OSK 2126/21 of 22 April 2022¹⁹). However, the same paragraph specifies that judgments are always public.

The right to have a case heard without undue delay consists of two elements. The first is related to the principle of speed. According to this principle, authorities should resolve the case as quickly as possible within a timeframe justified by the factual and legal circumstances of the case. The second element requires the legislator to examine those instruments which a party to the proceedings may effectively invoke in the event of its protracted nature. In Poland, this role is performed by the Act on complaints against violations of the right of a party to have a case examined in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings without undue delay.²⁰

¹⁷ Constitutional Tribunal ruling of 12 June 2013, Ts 239/12, Legalis No. 1351811.

¹⁸ Judgment of the Supreme Administrative Court of 12 April 2022, II OSK 1652/21, ONSAiWSA 2022, No. 5, item 75

¹⁹ Judgment of the Supreme Administrative Court of 22 April 2022, I OSK 2126/21, LEX No. 3357188.

²⁰ Act of 17 June 2004 on complaints against violations of the right of a party to have their case examined in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings without undue delay (i.e. Journal of Laws of 2023, item 1725).

In addition to the principles described above, which result from Article 42, the requirements of justice also include, in accordance with the provision, the competent court. The local and subject-matter jurisdiction of the court is specified by the legislator. According to judgment K 17/07 of 14 October 2010, the jurisdiction of the court should be as precise as possible in order to avoid doubts as to the categories of cases heard by the courts concerned.²¹ The court hearing the case must have the constitutional attributes mentioned in the cited provision. Failure to meet any of the above characteristics means that the body, even if designated by the state as a court, is not a court, which results in a violation of the right to a court (judgment SK 7/06 of 24 October 2007).²² Independence in doctrine is described on two levels: internal (related to the judge's conscience and conviction that they are acting in accordance with the law) and external (creating conditions for adjudication so that observers can be sure of the judge's independence and impartiality).²³ Independence means that the executive and legislative branches have no influence on rulings.

The final element of the right to a court is the right to obtain a final judgment. This right will be violated both in a situation where a partial decision is made in a case, not caused by procedural problems, and in a situation where the court refuses to make a decision. Exceptions are situations where the court lacks jurisdiction and procedural obstacles prevent it from issuing a judgment (e.g. the death of the defendant in a criminal trial). Constitutional protection of judgments is implemented in two ways: through instruments enabling the effective enforcement of judgments and through the control of the enforceability of judgments. With certain exceptions, judgments do not have to be justified *ex officio*. Most often, courts justify their judgments at the request of the parties.

²¹ Constitutional Tribunal judgment of 14 October 2010, K 17/07, OTK-A 2010, No. 8, item 75.

²² Constitutional Tribunal judgment of 24 October 2007, SK 7/06, OTK-A 2007, No. 9, item 108.

²³ P. Tuleja, [in:] P. Czarny, M. Florczak-Wątor, B. Naleziński, P. Radziejewicz, P. Tuleja, *Constitution of the Republic of Poland. Commentary*, 2nd ed., Warsaw 2023, art. 45.

Guarantees of a fair trial in Article 6 of the European Convention on Human Rights and in the case law of the ECtHR

With regard to international law, reference should be made to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁴ This article enshrines the right to a fair trial. The first paragraph establishes the general principle that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. According to Polish case law, the obligation arising from the Convention rests with the State.²⁵ In the context of the above passage, two examples from the case law of the European Court of Human Rights should be noted.

The concept of a reasonable time for hearing a case was addressed by the ECtHR in the context of application 30210/96, known as *Kudła v. Poland*.²⁶ Władysław Kudła was accused of fraud and forgery. At the time of the judgment, as noted by the Grand Chamber of the Court, the proceedings had already lasted nine years. It should be noted that the applicant was subject to a preventive measure of isolation in the form of pre-trial detention. This measure was extended to a period exceeding two years for fear of tampering with evidence and flight. In the *Kudła* case, the ECtHR found that Poland had violated the principle of diligence, according to which the State has an obligation to conduct proceedings with due diligence and speed (a principle established in earlier case law, for example: *STÖGMÜLLER v. Austria*²⁷ or *WEMHOFF v. Germany*²⁸). After examining the complexity of the case, the Court ruled that the proceedings had taken too long and that the mere suspicion of having committed a crime could not outweigh the presumption of innocence. In addition, the judgment drew attention to the long period of pre-trial

²⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended).

²⁵ Supreme Court ruling of 3 June 2005, III SPP 109/05, OSNP 2006, No. 1-2, item 33.

²⁶ Judgment of the European Court of Human Rights (WI) of 26 October 2000, 30210/96, *KUDŁA v. POLAND*, LEX No. 42804.

²⁷ Judgment of the European Court of Human Rights of 10 November 1969, 1602/62, *STÖGMÜLLER v. AUSTRIA*, LEX No. 80786.

²⁸ Judgment of the European Court of Human Rights of 27 June 1968, 2122/64, *WEMHOFF v. GERMANY*, LEX No. 80787.

detention. In its ruling on this case, the ECtHR also found that at that time there was no adequate remedy in Poland that would be effective in cases of excessive length of proceedings. In view of the above, the Grand Chamber found a violation of Articles 5, 6 and 13 in conjunction with Article 6 of the Convention.

In the case of *Urban and Urban v. Poland*, brought under application no. 23614/08, the ECtHR considered the issue of the defective composition of the panel of judges.²⁹ Henryk and Ryszard Urban were charged with an offence consisting in refusing to disclose their identity to a police officer. The District Court in Lesko ruled with a single judge. The Court ruled that a single judge did not meet the requirements of independence because he was appointed by the Minister of Justice (dependence on the executive branch). The ECtHR also referred to the Constitutional Tribunal's judgment SK 7/06 of 24 October 2007, which shared this position. The judgment also pointed out that the court of second instance, sitting in a properly constituted panel, did not correct the error of the court of first instance.³⁰ The European Court of Human Rights ruled that there had been a violation of Article 6 of the ECHR with regard to the right to have one's case heard by an independent court.

The next paragraph refers to the principle of the presumption of innocence. In the light of the European Convention on Human Rights and Fundamental Freedoms, this institution has a wide application. In examining complaint 8660/79 in the case of *MINELLI v. Switzerland*, the Court ruled that the presumption of innocence applies not only to the accused but also to the suspect: 'In the Court's view, Article 6 § 2 governs criminal proceedings as a whole, regardless of the outcome of the prosecution, and not only the examination of the merits of the charge.'³¹ The case law also extends the circle of addressees of the presumption of innocence. According to the ECtHR, the addressees are judges (*Iwańczuk v. Poland*)³², prosecutors (*Czajkowski v. Poland*)³³, experts (*DAKTARAS v. Lithuania*)³⁴ and even the media (*Italy v. Poland*)³⁵.

²⁹ Judgment of the European Court of Human Rights of 30 November 2010, 23614/08, *H. URBAN and R. URBAN v. POLAND*, LEX No. 621419.

³⁰ Constitutional Tribunal ruling of 24 October 2007, SK 7/06, OTK-A 2007, No. 9, item 108.

³¹ Judgment of the European Court of Human Rights of 25 March 1983, 8660/79, *MINELLI v. SWITZERLAND*, LEX No. 80843.

³² Judgment of the European Court of Human Rights of 15 November 2001, 25196/94, Legalis No. 104845.

³³ ECHR decision of 16 October 2007, 6809/03, Legalis No. 190344.

³⁴ ECHR decision of 11 January 2000, 42095/98, Legalis No. 204244

³⁵ ECHR decision of 30 March 2000, 27785/95, Legalis No. 204716.

The last paragraph mentions the fundamental rights of the accused: the right to be informed of the charges in a language they understand, the right to have time to prepare their defence, the right to defend themselves or be defended by a representative, the right to examine witnesses, and the right to free assistance from an interpreter. The Court found a violation of the right to defence in the case of *Lalik v. Poland*.³⁶ Lalik, while intoxicated, set fire to his friend's clothes, which led to his death as a result of burns. He was then taken to the police station, where his breath was found to contain 0.65 per mille of alcohol. After approximately 11 hours, an informal interrogation was conducted without the participation of Lalik's defence counsel and without prior instruction on the suspect's rights. On the same day, Lalik was questioned as a witness by the prosecutor. The next day, Lalik was charged with murder with particular cruelty. The accused was only allowed ten minutes of contact with his defence counsel in the presence of police officers. The defendant's explanations given during the absence of his defence counsel and the testimony of police officers became the main incriminating evidence in the trial before the Polish courts of first and second instance. The ECtHR ruled that the first interrogation should have been conducted in the presence of a defence counsel, with the interviewee being clearly sober. Any other interrogation constitutes a violation of the right to defence. The Court expressed the view that the court should remedy this error, which occurred at the preparatory stage of the proceedings. It was ruled that not only was the error not corrected, but the evidence obtained in violation of the right to defence was improperly assessed, which precludes a fair trial and simultaneously violates Article 6 of the Convention.

Guarantees of a fair trial in the 1997 Code of Criminal Procedure

When opening the Code of Criminal Procedure, attention should be paid to Article 2.³⁷ The first paragraph sets out the objectives of criminal

³⁶ Judgment of the ECtHR of 11 May 2023, 47834/19, *LALIK v. POLAND*, LEX No. 3550364.

³⁷ Act of 6 June 1997 Code of Criminal Procedure (i.e. Journal of Laws of 2025, item 46, as amended).

proceedings. The first point already indicates that it is the perpetrator who is to be held criminally responsible, not an innocent person. The third paragraph refers to the protection of the interests of the victim, with particular emphasis on their dignity, and the fourth paragraph refers to a reasonable time for the trial. In the context of paragraph 4, it is worth mentioning the Supreme Court's decision III KO 31/24 of 5 April 2024.³⁸ In this decision, the Supreme Court expressed the view that the premise of good administration of justice also applies when it is necessary to transfer a case to another court in order to ensure that the objectives of criminal proceedings are achieved. The ruling specifically refers to the resolution of a case within a reasonable time, thus highlighting point 4 of paragraph 1. The case law clearly indicates who is responsible for preventing the prolongation of proceedings. 'The state has a duty to organise the conditions for the proper exercise of judicial power, including ensuring optimal staffing of appeal courts adjudicating in social security cases, so that proceedings are not protracted.'³⁹ Case law also attempts to define what such delays are. According to the Court of Appeal in Krakow: 'In practice, protracted proceedings are understood as a lack of action aimed at reaching a decision, lasting longer than is necessary to consider the case or gather evidence. The point is that the actions aimed at issuing a final decision should take an appropriate amount of time, i.e. they should take place without undue delay.'⁴⁰ The same ruling indicated that not every lapse of time constitutes unnecessary delay, but only one that is gross and unjustified. This definition is well established in case law (for example, the ruling of the Court of Appeal in Krakow II S 6/08 of 1 October 2008)⁴¹. Article 2 §1 is therefore a kind of confirmation of the requirements for a fair trial, known both from the Constitution and from international law. The objectives of the proceedings specified therein are specified in the subsequent provisions of the code, and only these specified standards can be the basis for an appeal.⁴²

However, the second paragraph of this article is key. It clearly indicates that the basis for the decision should be true findings of fact – this is therefore the principle of material truth. According to case law, a true

³⁸ Supreme Court ruling of 5 April 2024, III KO 31/24, LEX No. 3707175.

³⁹ Supreme Court ruling of 8 March 2005, III SPP 34/05, OSNP 2005, No. 20, item 327.

⁴⁰ Decision of the Court of Appeal in Krakow of 23 November 2010, II S 28/10, LEX No. 783363.

⁴¹ Decision of the Court of Appeal in Krakow of 1 October 2008, II S 6/08, KZS 2008, No. 11, item 70.

⁴² Supreme Court ruling of 11 May 2022, V KK 198/22, LEX No. 3436336.

finding of fact should be understood as a proven finding, i.e. when the contrary evidence is impossible or highly improbable.⁴³ It should be emphasised that making such findings does not depend on the number of pieces of evidence, but on their credibility, which is determined in accordance with Article 7, i.e. the principle of free evaluation of evidence.⁴⁴ The doctrine indicates that this is a principle from which other principles of criminal procedure derive. The institution itself is referred to as the principle of principles. As Michał Kurowski notes, this status stems from the fact that it justifies specific actions, such as reading the minutes of witness examinations during the trial.⁴⁵ However, this principle applies to the entire proceedings, both preparatory and judicial. This provision is addressed to the procedural authorities, which are responsible for establishing the true facts. It is also worth noting that the second paragraph, which expresses such an important principle for the entire criminal process, is not extensive. It is a single short sentence, but it is so apt that, despite many amendments to the Code of Criminal Procedure, this provision has not changed since the legal act came into force.

It seems reasonable to say that the reliability of the Polish criminal process is based on two pillars that guarantee the defendant's rights while pursuing the goal of criminal proceedings, which is to establish the facts that allow for conviction or acquittal. These pillars are The right to defence and the presumption of innocence

The right to defence as a guarantee of a fair trial

The right to defence is the foundation of the guarantees afforded to the accused. It is from this procedural institution that most of the rights of the accused derive. The fundamental nature of this construction is evidenced by the fact that if the defendant requests an adjournment of the hearing due to the absence of the defence counsel, the court should grant this request.⁴⁶ This example shows that, according to case law, in

⁴³ Judgment of the Court of Appeal in Gdańsk of 30 December 2010, II AKa 280/10, POSAG 2011, No. 2, items 134–162.

⁴⁴ Supreme Court ruling of 22 May 2014, III KK 117/14, LEX No. 1482405.

⁴⁵ M. Kurowski, [in:] D. Świecki (ed.), *Code of Criminal Procedure. Volume I. Updated Commentary*, Warsaw 2025, art. 2 [LEX/el.].

⁴⁶ Supreme Court ruling of 24 May 2023, III KK 670/22, LEX No. 3563474.

the event of a conflict of norms, the principle of the right to defence takes precedence over the principle of procedural economy.

Although the right to defence is enshrined in Article 6 of the Code of Criminal Procedure, this one laconic sentence is only the tip of the iceberg. The concept of the right to defence encompasses many rights to which the accused is entitled. The right to defence stems from the right to a court and trial, during which the accused has the right to defend himself or herself or with the assistance of a representative. In order to enable this defence, the accused has the right to appear at every hearing and at those hearings which provide for the participation of the parties. No one can deprive him of this right. According to the Supreme Court ruling I KK 480/23 of 21 March 2024, depriving him of this opportunity is a violation of the right to defence.⁴⁷ Procedural actions in the absence of the defendant may only be carried out if his presence is not mandatory and the defendant himself has been duly notified of the date. Incorrect notification or lack of notification precludes the performance of such actions.⁴⁸

The Code also provides for facilitation of participation in the trial by allowing the defendant to participate remotely. However, this is only possible if the defendant is deprived of liberty, as the doctrine points out, and psychiatric institutions should also be taken into account here.⁴⁹ At the same time, it should be added that once the defendant is no longer deprived of liberty, they lose the right to participate remotely in the trial. In such situations, the rule is that the defence counsel participates in the trial at the place where the defendant is staying. However, the defence counsel may participate in the trial by being physically present in court.

As mentioned, no one can deprive the defendant of the right to participate in the trial, but the code provides for such procedural actions in criminal cases where the defendant's presence is required. An exception to this right is the possibility of issuing a summary judgment. In such a case, the court does not rule at the hearing, but issues a judgment without the participation of the parties, i.e. without the participation of either the prosecutor or the defendant. This happens when the court considers that it is possible to issue a judgment solely on the basis of the evidence gathered during the preparatory proceedings. However,

⁴⁷ Supreme Court ruling of 21 March 2024, I KK 480/23, LEX No. 3698447.

⁴⁸ Supreme Court ruling of 18 April 2024, I KK 15/24, LEX No. 3706825.

⁴⁹ M. Klejnowska, [in:] J. Zagrodnik (ed.), *Code of Criminal Procedure. Commentary*, Warsaw 2024, art. 374.

as follows from case law, when issuing a summary judgment, the court cannot change the classification of the act adopted by the prosecutor, as it does not conduct the evidentiary proceedings itself.⁵⁰ The issuance of a summary judgment significantly limits the possibility of exercising the rights of the defendant. In order to prevent abuse of this institution, case law has formulated negative grounds for issuing a summary judgment. If the defendant has not admitted guilt and the line of defence has not been verified, there are no grounds for issuing a summary judgment.⁵¹ It should be emphasised that a defendant against whom a judgment has been issued under Article 500 of the Code of Criminal Procedure (as well as their defence counsel) may appeal against this judgment within 7 days of its delivery. Upon lodging an objection (which may be withdrawn until the commencement of the trial at the first hearing), the summary judgment becomes *de jure* invalid and the trial itself is conducted in accordance with general rules.

In Polish criminal proceedings, the defendant, as the only participant in the criminal proceedings, is not obliged to tell the truth. The mere fact of not telling the truth cannot worsen the defendant's situation.⁵² Moreover, they have the right to refuse to provide explanations, i.e. answers to specific questions, without giving any justification. This view is well established in case law (for example, Supreme Court Decision I KZ 107/84 of 27 July 1984,⁵³ the judgment of the Court of Appeal in Białystok II AKa 175/14 of 23 October 2014⁵⁴, or the judgment of the Court of Appeal in Krakow II AKa 191/02 of 19 September 2002⁵⁵). Among these rights, it should be noted that, just as the accused has the right to refuse to answer questions, they also have the right to answer questions.⁵⁶ The defendant also has the right to ask questions to both the persons being questioned and the co-defendants. While admitting guilt and expressing remorse always constitutes a mitigating circumstance in criminal liability, failure to admit guilt and express remorse cannot have a negative impact on the defendant's situation (Supreme Court Judgment II KR 10/81 of

⁵⁰ Supreme Court ruling of 13 September 2023, II KK 221/23, LEX No. 3604648.

⁵¹ Supreme Court ruling of 5 December 2023, I KK 255/23, LEX No. 3637346.

⁵² Supreme Court ruling of 4 June 1974, III KR 24/74, OSNKW 1974, No. 10, item 188.

⁵³ Supreme Court ruling of 27 July 1984, I KZ 107/84, OSNKW 1985, No. 3-4, item 26.

⁵⁴ Judgment of the Court of Appeal in Białystok of 23 October 2014, II AKa 175/14, LEX No. 1602863.

⁵⁵ Judgment of the Court of Appeal in Krakow of 19 September 2002, II AKa 191/02, KZS 2002, No. 11, item 12.

⁵⁶ Supreme Court ruling of 27 July 1984, I KZ 107/84, OSNKW 1985, No. 3-4, item 26.

5 February 1981⁵⁷ or Judgment of the Court of Appeal in Łódź, II AKa 302/12, of 7 February 2013⁵⁸). The defendant may also seek to prove his innocence in proceedings before a higher court. Like the prosecutor, he has the initiative to appeal.

The defendant has all the above-mentioned rights and may exercise them without a defence counsel. The Code of Criminal Procedure not only provides for the possibility of representation by a representative, as guaranteed by Article 6, but in several situations it guarantees such a representative. Mandatory defence is not dependent on the will of the defendant. They cannot waive it or decide whether the defence counsel should participate in the trial (as ruled by the Supreme Court in its judgment V KK 485/17 of 16 January 2018⁵⁹). It should be noted that mandatory defence covers hearings and sessions specified in the Act, but does not include the interrogation of a suspect in preparatory proceedings (V KK 272/06).⁶⁰ This is the case when the accused is deaf, mute or blind, or when they are under the age of 18.

Similarly, when there is doubt as to whether he recognised the significance of his actions at the time of committing the offence, or when his mental state raises doubts as to whether he is capable of conducting his own defence. It should be noted that, according to case law, insanity does not have to be evident; it is sufficient that there is a high probability of such circumstances occurring.⁶¹ In such a case, it is the court's responsibility to take steps to clarify the issue of sanity.⁶² As the Code of Criminal Procedure does not contain a definition of sanity, Polish criminal procedure is based on the definition in Article 31 of the Criminal Code.⁶³ According to the Supreme Court, a finding by experts that the conditions for insanity under Article 31 of the Criminal Code are not met results in a lack of sanity within the meaning of the Code of Criminal Procedure.⁶⁴ The Supreme Court also considers that if, in one case, the court has found that the conditions for insanity have been met, it would be going too far to assume insanity *ex officio* in other cases.⁶⁵ At the same

⁵⁷ Supreme Court ruling of 5 February 1981, II KR 10/81, OSNKW 1981, No. 7-8, item 38.

⁵⁸ Judgment of the Court of Appeal in Łódź of 7 February 2013, II AKa 302/12, LEX No. 1271893.

⁵⁹ Supreme Court ruling of 16 January 2018, V KK 485/17, LEX No. 2434487.

⁶⁰ Supreme Court ruling of 17 May 2007, V KK 272/06, LEX No. 277257.

⁶¹ Supreme Court ruling of 31 March 2023, I KK 307/22, LEX No. 3574940.

⁶² Supreme Court ruling of 1 October 2008, IV KK 89/08, LEX No. 465598.

⁶³ Act of 6 June 1997, Criminal Code (i.e. Journal of Laws of 2025, item 383).

⁶⁴ Supreme Court ruling of 14 March 2008, IV KK 434/07, OSNwSK 2008, No. 1, item 652.

⁶⁵ Supreme Court ruling of 5 April 2005, III KK 193/04, OSNwSK 2005, No. 1, item 691.

time, it should be noted that the mere fact of alcohol abuse or drug use by the defendant does not constitute insanity within the meaning of the Code of Criminal Procedure (Supreme Court decision III KK 6/15 of 28 April 2015⁶⁶ or II KK 384/16 of 20 December 2016⁶⁷).

A defence counsel is also mandatory when the defendant is charged with a crime or when the legal or factual circumstances of the case, in the opinion of the court, make defence difficult. If, in any of the above cases, the defendant does not have a defence counsel of their choice, the court appoints a defence counsel *ex officio*. The same applies when the defendant submits a request for the appointment of a public defender due to their financial situation. Exercising this right obliges the court to consider such a request.

Presumption of innocence as a guarantee of a fair trial

The second pillar is the presumption of innocence. It stems from Article 5 of the Code of Criminal Procedure. It consists of two elements: recognising the accused as innocent until their guilt is proven and confirmed by a final judgment, and that all unexplained circumstances should be resolved in favour of the accused. Although this institution draws heavily on the principle of *praesumptio boni viri* developed in Roman law, the legislator did not always include it in the code. In the Code of Criminal Procedure of 1928, the presumption of innocence was not expressed *expressis verbis*.⁶⁸ However, this gap was filled by doctrine and case law, which consistently adhered to this principle. The 1969 Code stated that: ‘the accused shall not be considered guilty until his guilt has been proven in accordance with the procedure provided for in this Code.’⁶⁹ Thus, a certain reversal was indicated here. It contained not so much a presumption of innocence as a prohibition of presumption of guilt.

Article 5 is therefore a reflection of the maxim *in dubio pro reo* in current criminal proceedings. The limits of the violation of this maxim were attempted to be established by case law, which stated: ‘The principle

⁶⁶ Supreme Court ruling of 28 April 2015, III KK 6/15, LEX No. 1681515.

⁶⁷ Supreme Court ruling of 20 December 2016, II KK 384/16, LEX No. 2188792.

⁶⁸ Code of Criminal Procedure of 19 March 1928 (i.e. Journal of Laws of 1950, No. 40, item 364, as amended).

⁶⁹ Act of 19 April 1969 Code of Criminal Procedure (Journal of Laws No. 13, item 96, as amended).

of *in dubio pro reo*, in accordance with established case law and doctrinal views, could only be invoked if the court *meriti* had pointed to various versions of events that could not be ruled out and had not, in such a set of evidence, adopted a finding more favourable to the defendant.⁷⁰ It should be added that this principle applies not only to factual findings, but there is nothing to prevent it from being applied to legal issues, especially when all means of interpretation have been exhausted and doubts remain.⁷¹

In Polish criminal proceedings, *onus probandi* lies with the prosecutor. The defendant is therefore not required to prove his innocence. This principle is not absolute. As the European Court of Human Rights noted in its judgment in *Lingens v. Austria*, the burden of proof may also fall on the defendant if he or she attempts to prove circumstances confirming his or her defence.⁷²

In criminal proceedings, the presumption of innocence is a very strong institution. This presumption alone may be the basis for an acquittal. As the Supreme Court has ruled, in order for an acquittal to be granted, it is not necessary to prove the defendant's innocence; it is sufficient that the guilt of the act alleged by the prosecutor has not been proven.⁷³ In addition, Article 5 imposes an obligation on the court to take into account in each case the fact that the defendant must be acquitted if guilt is not proven.⁷⁴

In Polish law, it is broken in two ways. The first, mentioned in Article 5 itself, is a final conviction. The second is the institution of pre-trial detention, where, even though no sentence has yet been passed, if certain conditions are met, a preventive measure of isolation is applied, thereby depriving the suspect or accused of their liberty. However, the second exception mentioned above is not tantamount to overturning the presumption of innocence, as the application of pre-trial detention by the court is not equivalent to a finding of guilt. Therefore, Article 249§1 refers to a high probability of committing a crime, as the determination

⁷⁰ Supreme Court ruling of 7 July 2017, III KK 144/17, LEX No. 2342142.

⁷¹ Judgment of the Court of Appeal in Lublin of 10 October 2012, II AKa 162/12, LEX No. 1237251; Judgment of the Court of Appeal in Katowice of 24 February 2017, II AKa 550/16, LEX No. 2278206.

⁷² Judgment of the European Court of Human Rights of 8 July 1986, 9815/82, *LINGENS v. AUSTRIA*, LEX No. 81012.

⁷³ Supreme Court ruling of 7 December 2022, I KA 13/22, LEX No. 3566901.

⁷⁴ Judgment of the Court of Appeal in Katowice of 28 December 2011, II AKa 382/11, LEX No. 1171016.

of the defendant's guilt is reserved for the moment of sentencing.⁷⁵ A limitation on the use of pre-trial detention is Article 257§1, which states that pre-trial detention shall not be used if another preventive measure is sufficient.

Summary

In summary, the idea of justice has guided democratic civilisations since their inception, as best evidenced by Roman maxims that are still visible in criminal procedure regulations today. Despite the passage of centuries, the right to a fair criminal trial, which is intended to guarantee this justice, is important not only for Poland, as confirmed by the constitution and the code of criminal procedure, but also for the international community. In Polish criminal proceedings, a fair trial is based on two pillars: the right to defence and the presumption of innocence. Although these are not absolute, as it is possible to override them completely or partially, they guarantee the rights of the accused and thus a fair criminal trial.

⁷⁵ Decision of the Court of Appeal in Katowice of 16 July 2008, II AKz 514/08, LEX No. 465065.

Bibliography

I. Legal acts

Act of 6 June 1997 Code of Criminal Procedure (i.e. Journal of Laws of 2025, item 46, as amended)

Act of 6 June 1997, Criminal Code (i.e. Journal of Laws of 2025, item 383)

Act of 17 June 2004 on complaints against violations of the right of a party to have their case examined in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings without undue delay (i.e. Journal of Laws of 2023, item 1725)

Act of 19 April 1969 Code of Criminal Procedure (Journal of Laws No. 13, item 96, as amended)

Code of Criminal Procedure of 19 March 1928 (i.e. Journal of Laws of 1950, No. 40, item 364, as amended)

Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended)

The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended)

II. Bibliographical sources

Florczak-Wątor M., [in:] P. Tuleja (ed.), *Constitution of the Republic of Poland. Commentary*, 2nd ed., Warsaw 2023

Grzegorzczak P., Weitz K., [in:] M. Safjan, L. Bosek (eds.), *Constitution of the Republic of Poland. Volume I. Commentary on Articles 1–86*, 1st ed., Warsaw 2016

Klejnowska M., [in:] J. Zagrodnik (ed.), *Code of Criminal Procedure. Commentary*, Warsaw 2024

Kurowski M., [in:] D. Świecki (ed.), *Code of Criminal Procedure. Volume I. Updated Commentary*, Warsaw 2025 [LEX/el.]

Radbruch G., *Philosophy of Law*, Warsaw 2012

Sarnecki P., [in:] L. Garlicki, M. Zubik (eds.), *Constitution of the Republic of Poland. Commentary. Volume II*, 2nd ed., Warsaw 2016

Tuleja P., [in:] P. Czarny, M. Florczak-Wątor, B. Naleziński, P. Radziejewicz, P. Tuleja, *Constitution of the Republic of Poland. Commentary*, 2nd ed., Warsaw 2023

III. Case law

- Constitutional Tribunal judgment of 8 December 1998, K 41/97
- Constitutional Tribunal judgment of 9 June 1998, K 28/97
- Constitutional Tribunal judgment of 16 November 1999, SK 11/99
- Constitutional Tribunal judgment of 3 November 2004, K 18/03
- Constitutional Tribunal judgment of 24 October 2007, SK 7/06
- Constitutional Tribunal judgment of 14 October 2010, K 17/07
- Constitutional Tribunal ruling of 16 May 2000, P 1/99
- Constitutional Tribunal ruling of 10 May 2000, K 21/99
- Constitutional Tribunal ruling of 10 July 2000, SK 12/99
- Constitutional Tribunal ruling of 11 September 2001, SK 17/00
- Constitutional Tribunal ruling of 6 October 2004, SK 23/02
- Constitutional Tribunal ruling of 12 June 2013, Ts 239/12
- Decision of the Court of Appeal in Katowice of 16 July 2008, II AKz 514/08
- Decision of the Court of Appeal in Krakow of 1 October 2008, II S 6/08
- Decision of the Court of Appeal in Krakow of 23 November 2010, II S 28/10
- ECHR decision of 11 January 2000, 42095/98 (DAKTARAS v. LITHUANIA)
- ECHR decision of 30 March 2000, 27785/95 (ITALY v. POLAND)
- ECHR decision of 16 October 2007, 6809/03 (CZAJKOWSKI v. POLAND)
- Judgment of the Court of Appeal in Białystok of 23 October 2014, II AKa 175/14
- Judgment of the Court of Appeal in Gdańsk of 30 December 2010, II AKa 280/10
- Judgment of the Court of Appeal in Katowice of 28 December 2011, II AKa 382/11
- Judgment of the Court of Appeal in Katowice of 24 February 2017, II AKa 550/16
- Judgment of the Court of Appeal in Krakow of 19 September 2002, II AKa 191/02
- Judgment of the Court of Appeal in Lublin of 10 October 2012, II AKa 162/12
- Judgment of the Court of Appeal in Łódź of 7 February 2013, II AKa 302/12
- Judgment of the ECtHR of 27 June 1968, 2122/64 (WEMHOFF v. GERMANY)
- Judgment of the ECtHR of 10 November 1969, 1602/62 (STÖGMÜLLER v. AUSTRIA)
- Judgment of the ECtHR of 25 March 1983, 8660/79 (MINELLI v. SWITZERLAND)
- Judgment of the ECtHR of 8 July 1986, 9815/82 (LINGENS v. AUSTRIA)
- Judgment of the ECtHR of 26 October 2000, 30210/96 (KUDŁA v. POLAND)
- Judgment of the ECtHR of 15 November 2001, 25196/94 (IWAŃCZUK v. POLAND)

Judgment of the ECtHR of 30 November 2010, 23614/08 (URBAN and URBAN v. POLAND)

Judgment of the ECtHR of 11 May 2023, 47834/19 (LALIK v. POLAND)

Judgment of the Supreme Administrative Court of 12 April 2022, II OSK 1652/21

Judgment of the Supreme Administrative Court of 22 April 2022, I OSK 2126/21

Supreme Court ruling of 4 June 1974, III KR 24/74

Supreme Court ruling of 5 February 1981, II KR 10/81

Supreme Court ruling of 27 July 1984, I KZ 107/84

Supreme Court ruling of 5 April 2005, III KK 193/04

Supreme Court ruling of 8 March 2005, III SPP 34/05

Supreme Court ruling of 3 June 2005, III SPP 109/05

Supreme Court ruling of 17 May 2007, V KK 272/06

Supreme Court ruling of 14 March 2008, IV KK 434/07

Supreme Court ruling of 1 October 2008, IV KK 89/08

Supreme Court ruling of 22 May 2014, III KK 117/14

Supreme Court ruling of 28 April 2015, III KK 6/15

Supreme Court ruling of 20 December 2016, II KK 384/16

Supreme Court ruling of 7 July 2017, III KK 144/17

Supreme Court ruling of 16 January 2018, V KK 485/17

Supreme Court ruling of 11 May 2022, V KK 198/22

Supreme Court ruling of 7 December 2022, I KA 13/22

Supreme Court ruling of 31 March 2023, I KK 307/22

Supreme Court ruling of 24 May 2023, III KK 670/22

Supreme Court ruling of 13 September 2023, II KK 221/23

Supreme Court ruling of 5 December 2023, I KK 255/23

Supreme Court ruling of 21 March 2024, I KK 480/23

Supreme Court ruling of 5 April 2024, III KO 31/24

Supreme Court ruling of 18 April 2024, I KK 15/24

