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Considerations Regarding the Model of Polish Preparatory Proceedings

ABSTRACT: *The subject of this article is the analysis of selected issues of the Polish model of preparatory proceedings. The author begins his considerations by highlighting historical and model issues, whereafter he discusses the goals of preparatory proceedings resulting from the Code of Criminal Procedure 1997. The next segment analysed is the forms and phases of preparatory proceedings. Further on, the article discusses the prosecutor's supervision of preparatory proceedings and the role of the judicial factor in this phase of preparatory proceedings. The last substantive subsection deals with the options for the termination of preparatory proceedings. It concludes with a final assessment of the model—divided into its advantages and disadvantages. In addition, the author derives de lege fereneda conclusions, which would contribute to the improvement of the current model of Polish preparatory proceedings.*
KEYWORDS: *criminal proceedings, criminal trial, preparatory proceedings, preparatory model, model of criminal procedure*

1. Introduction

Criminal proceedings can be defined as legally regulated activities aimed at implementing the norms of substantive criminal law.[1] The activity in question is regulated by the provisions of criminal procedural (formal) law, which shape the model of this procedure. An indispensable element of the criminal process is its stages. Simply put, it consists of individual stages (stages) that have characteristic features and specific actions (including procedural actions) taken in them.[2] It should be noted that the legislator is free to regulate the various stages of criminal procedure.

1 Grzegorczyk and Tylman 2022 p. 56.
2 Bojanowski 2023, p. 50.

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The subject of this article will be a discussion of selected issues of the Polish model of preparatory proceedings. At this point, it is noteworthy that not every modern system of criminal procedural law provides for this stage of proceedings (e.g., Anglo-Saxon[3]). As a rule, it is characteristic of continental systems. By way of exception, it may be limited, even in the realities of the continental system, for example, in a simplified procedure. This stage does not occur at all in proceedings initiated by private prosecution.[4] Nevertheless, it must be regarded as an indispensable element of criminal procedure, the purpose of which is to prepare a specific case before the stage of the judicial proceedings.

The pre-trial model should be defined as a set of basic elements of a specific system that allows it to be distinguished from others.[5] It must consider the many needs of the universally understood justice system (often in conflict with each other) as well as the reconciliation of social interests with the goods and values it is supposed to protect.[6] Ultimately, the model should be constructed in such a way as to provide tools to effectively detect and bring to justice the perpetrators of crimes, while guaranteeing suspects legitimate rights (procedural guarantees).[7]

In Poland, as a rule, criminal and preparatory proceedings are regulated by the Code of Criminal Procedure (CCP) of 1997.[8] It is worth mentioning here that earlier in Poland, there were two comprehensive penal procedures: the CCP of 1928[9] and the CCP of 1969[10]. Owing to the outlined subject of the article, that is, the model of the current preparatory proceedings, historical issues will not be analysed.[11]

It is worth mentioning that apart from the CCP, criminal procedural issues (related to preparatory proceedings) are also regulated by other legal acts, including: the Penal Fiscal Code Act[12]; the Act on the Liability of Collective Entities for Acts Prohibited under Penalty[13]; the Law on the Supreme Court[14]; the Law on Ordinary Courts Organisation[15];

3 Eichstaedt, 2009, p. 14.
4 Kruszyński 2004, p. 309.
5 Waltoś 1968, p. 9.
6 Grzegorczyk and Tylman 2022 p. 56; Wielec, 2017, pp. 149–277.
7 Grzeszczyk 1981 p. 3.
8 Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws 2022, item 1375, as amended.
9 Ordinance of the President of the Republic of 19 March 1928 Code of Criminal Procedure, Journal of Laws 1928 no. 33 item 313.
10 Law of 19 April 1969 Code of Criminal Procedure, Journal of Laws 1969 no. 13 item 96.
11 Eichstaedt, 2009, pp. 58-87.
12 Law of 10 September 1999 Penal Fiscal Code, Journal of Laws 2023, item 654.
13 Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty, Journal of Laws 2023, item 659.
14 Act of 8 December 2017 on the Supreme Court, Journal of Laws 2023, item 1093.
15 Act of 27 July 2001 Law on the System of Common Courts, Journal of Laws 2023 tem. 217, as amended.

the Law on the Public Prosecutor's Office[16]; the Police Act[17]; the Law on the Bar[18]; the Law on Legal Advisers[19]; the Act on the Internal Security Agency and the Foreign Intelligence Agency[20]; the law on the Central Anti-Corruption Bureau[21]; the Border Guard Act[22]; the Act on the Commissioner for Human Rights[23]; the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation[24]; the Act on the Recognition of Invalidity of Judgments Issued against Persons Repressed for Activities for the Independent Existence of the Polish State[25]; the Drug Abuse Act[26]; the Crown Witness Act [27]; and the Prison Service Act[28].

It should be pointed out that this is not a closed catalogue, but the indicated acts may have a significant impact on the proper criminal process and the model of Polish preparatory proceedings analysed in this study.

In summary, this article discusses and assesses selected aspects of the model of preparatory proceedings in the Polish criminal process. The author will analyse the objectives and functions of preparatory proceedings and discuss their forms and phases. In addition, it will point out issues related to the prosecutor's supervision of preparatory proceedings, the involvement of the judicial factor at this stage of the proceedings, and the conclusion of the preparatory proceedings. This analysis was based on methods appropriate for legal sciences—formal-dogmatic and theoretical-legal.

2. Objectives of the investigation

The objectives of this investigation should be highlighted against the background of the general objectives of the criminal process. The lack of clarification of this issue

16 Act of 28 January 2016 Law on the Public Prosecutor's Office, Journal of Laws of 2022, Journal of Laws 2022 item. 1247, as amended.
17 Act of 6 April 1990 on the Police, Journal of Laws 2023 item 171, as amended.
18 Act of 26 May 1982 Law on the Bar, t.j. Journal of Laws 2022 item. 1184, as amended.
19 Act of 6 July 1982 on legal advisers, Journal of Laws 2022 item 1166.
20 Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency, Journal of Laws 2022, item 557, as amended.
21 Act of 9 June 2006 on the Central Anti-Corruption Bureau, Journal of Laws 2022, item 1900, as amended.
22 Act of 12 October 1990 on the Border Guard, Journal of Laws 2022, item 1061, as amended.
23 Act of 15 July 1987 on the Commissioner for Human Rights, Journal of Laws 2023, item 1058.
24 Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, Journal of Laws 2023 item 102.
25 Act of 23 February 1991 on the recognition of invalidity of judgments issued against persons repressed for activities for the independent existence of the Polish State, Journal of Laws2021 r. item. 1693.
26 Act of 29 July 2005 on counteracting drug addiction Journal of Laws 2023 item. 172, as amended.
27 Act of 25 June 1997 on the Crown Witness, Journal of Laws 2016 r. item 1197.
28 Act of 9 April 2010 on Prison Service, Journal of Laws 2022 item 2470, as amended.

may result in certain deficiencies in the argument, which is based on the complementarity of the objectives of the preparatory proceedings and the criminal process[29], as the essence of the adopted model.

Under Article 2 § 1, the purpose of the provisions of the Criminal Procedure Act is to structure criminal proceedings in such a way that:

1. the perpetrator of the offence has been detected and held criminally responsible, and the innocent person has not been held responsible;
2. through the correct application of the measures provided for in criminal law and the disclosure of the circumstances conducive to the commission of a crime, the tasks of criminal proceedings have been achieved not only in combating crimes but also in preventing them and in strengthening respect for the law and principles of social coexistence;
3. the legally protected interests of the victim are taken into account while respecting his dignity;
4. the case was resolved within a reasonable time.

On the one hand, the application of Article 2 § 2 should be based on true factual findings, which will express one of the main principles of the criminal process—material truth.[30]

On the other hand, pursuant to Article 297 § 1 of the CCP, apart from the objectives of the preparatory proceedings, its functions may also be defined, which include: 1) the preparatory function consisting in collecting and consolidating evidence on the basis of which the decision to bring an indictment is taken (essential function); 2) prophylactic based on the preparation of conditions preventing or hindering the re-offending accessory function; 3) relatively preliminary ruling, expressed in the effect of procedural decisions on decisions taken in other proceedings (accessory function).[31]

According to the theory of the criminal process, the objectives set out in Article 297 § 1 of the CCP are also called specific because their primary aim is to determine whether there is a factual basis for bringing an indictment within the meaning of Article 322 of the CCP.[32] However, the achievement of objectives is activated only if a specific procedural authority possesses the relevant knowledge.[33]

Pursuant to Article 297 § 1, the objectives of the preparatory proceedings are, respectively:

29 Grzegorczyk and Tylman 2022, p. 820.
30 Grzegorczyk and Tylman 2022, p. 820.
31 Waltoś and Hofmański 2020, pp. 505-510.
32 Stefański and Zabłocki, 2004, p. 294.
33 Świecki2023.

1. determining whether a criminal offence has been committed and constitutes a criminal offence;
2. detection and, if necessary, apprehend of the offender;
3. collection of data pursuant to Articles 213 and 214 of the CCP;
4. clarification of the circumstances of the case, including the determination of the victims and the extent of the damage;
5. collecting, securing and, to the extent necessary, consolidating evidence for the court.

The primary purpose of this investigation is to determine whether a criminal offence has been committed and whether it constitutes a criminal offence. If the answer is in the affirmative, the authorities will carry out further actions to achieve far-reaching objectives of the preparatory proceedings. However, if the answer is in the negative, the proceedings will be discontinued on the ground that they are devoid of purpose. When the competent authority considers that a criminal act has been committed, their task is to identify the perpetrator or perpetrators and apprehend them, and even to apply proportionate preventive measures in the form of, for example, pre-trial detention.[34] Another task of law enforcement agencies is to collect relevant so-called personal and cognitive data.[35] These data allow the identity of the accused to be established and any personal data that will help identify him or her and are relevant from the perspective of criminal proceedings. In preparatory proceedings, the circumstances of the case should be clarified to bring an indictment (there is no need to explain the case in a comprehensive manner).[36] The victims and the extent of the damage should also be determined so that they can participate in criminal proceedings (if they so wish). In addition, the purpose of preparatory proceedings is to collect, secure, and consolidate, to the extent necessary, evidence for jurisdictional proceedings. At this point, the evidentiary proceedings in preparatory proceedings are of key importance, and if procedural authorities make mistakes here, it is difficult to correct them at the next stage of the proceedings.

To sum up, the objectives of preparatory proceedings are clearly defined in the exhaustive catalogue in Article 297 § 1 of the CCP. It must be analysed in the light of Article 2 § 1 of the CCP vis-à-vis the general objectives of the criminal process. Based on the abovementioned provisions, the model of preparatory proceedings can be decoded, but it should be borne in mind that the shape of the model is ultimately determined by specific institutions and solutions resulting from specific regulations.[37]

34 Izydorczyk 2002, p. 27.
35 Waltoś and Hofmański 2020, pp. 418-419.
36 Grzegorczyk and Tylman 2022, pp. 820-824.
37 Grzegorczyk and Tylman 2022, p. 916.

3. Forms of procedure

Highlighting the objectives of preparatory proceedings indicated the general model of Polish preparatory proceedings. It also allows one to move on to selected substantive issues that need to be discussed. The first of these should include the forms of proceedings.

The CCP provides for two forms of preparatory proceedings, namely, investigation and enquiry, which can be discussed from both objective and subjective perspectives. As a rule, the investigation is formal and concerns acts punishable by a higher penalty. However, the enquiry is less formal and concerns crimes punishable by a lower penalty.

The investigation is generally conducted by the prosecutor. The CCP distinguishes between own investigations (Article 311 § l of the CCP) and investigations commissioned by the prosecutor to the police and other bodies with criminal procedural powers (Article 313 § 3 of the CCP) in full, in part, or for the purpose of performing a specific action.[38] Pursuant to Article 309 of the CCP, an investigation is obligatory in cases: 1) in which the regional court has jurisdiction to hear it at first instance; 2) for misdemeanours – when the suspect is a judge, prosecutor, officer of the police, Internal Security Agency, Foreign Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, State Protection Service, Marshal's Guard, Customs and Tax Service, or the Central Anti-Corruption Bureau; 3) for misdemeanours – where the suspect is an officer of the Border Guard, the Military Police, a financial pre-trial body, or a superior body over a financial pre-trial body, in matters falling within the competence of these authorities or of misdemeanours committed by these officers in connection with the performance of official duties; 4) for offences in which no investigation is carried out. In addition, the investigation may be optional, which results from Article 309 § 5 of the CCP, that is, in cases of misdemeanours in which an investigation is conducted, if the prosecutor so decides due to the importance or complexity of the case.

The investigation should last a maximum of 3 months; however, in justified cases, the investigation period may be extended for a further period of time as determined by the prosecutor supervising the investigation or the prosecutor directly superior to the prosecutor who conducts the investigation, but not longer than one year. In exceptional cases, it is possible to extend the investigation for a further specified period.

The enquiry is carried out by the police or other authorities authorised to do so within the scope of their competence. We distinguish between ordinary investigation and the so-called investigation (proceedings) to the extent necessary. The CCP once provided for the so-called simplified enquiry, but it was decided to abandon it.

As a rule, an enquiry is carried out in cases where an investigation is not mandatory. In addition, Article 325b § 1 of the Code of Civil Procedure provides for the

38 Kruszyński 2004, p. 313.

investigation of offences falling within the jurisdiction of the district court: 1) punishable by a penalty not exceeding 5 years of imprisonment, except that in the case of crimes against property only if the value of the object of the crime or the damage caused or threatened does not exceed PLN 200,000; 2) provided for in Articles 159, 254a, and 262 § 2 of the Penal Code; 3) provided for in Article 279 § 1, Article 286 § 1 and 2, and Article 289 § 2 of the Penal Code, if the value of the object of the offence or the damage caused or threatened does not exceed PLN 200,000.

Decisions to initiate an enquiry, refuse to open an enquiry, close an enquiry and enter a case in the register of offences, and close an enquiry and suspend it do not require a statement of reasons.[39] It is also possible to use the so-called registered redemption. An enquiry does not require a decision to bring charges nor close the investigation, provided that the suspect has not been remanded in custody. It is also possible to limit this form of proceedings to determine whether there are sufficient grounds for an indictment or other termination of the proceedings. Moving on to the deadlines, it should be noted that it should be completed within 2 months. The public prosecutor may extend this period to 3 months and, in exceptional cases, for a further specified period.

It is also possible to carry out an enquiry to the extent necessary, in accordance with Article 308 of the CCP. This happens before the formal initiation of preparatory proceedings, providing the opportunity to carry out procedural actions to the extent necessary, within the limits necessary to secure traces and evidence of the crime against loss, distortion, or destruction.[40]

4. Phases of the procedure

Polish criminal procedural law system provides for two phases of preparatory proceedings, namely, ‚in rem' proceedings[41], triggered by a decision initiating preparatory proceeding, and proceedings against a person (in personam), which begin with a decision to present a statement of objections.[42] The legislator decides to distinguish between phases of proceedings to organise specific procedural actions and make this phase of the proceedings more transparent.

On the one hand, the 'in the case' phase occurs when a crime has been revealed, but the procedural authorities are unsure of the identity of the perpetrator. Therefore, all activities are focused on finding the perpetrator and determining the circumstances of the act.

39 Kurowski 2015, pp. 64-70.
40 Janusz-Pohl and Mazur, 2010, pp. 81-91.
41 Kruszyński 2004, p. 306.
42 Cieślak 2011, p. 273.

On the other hand, the 'against the person' phase is a consequence of the actions taken in 'in the case' phase. However, there are also cases where the perpetrator is known at the time of crime detection: then the 'in rem' phase is omitted and the proceedings have only the 'in personam' phase. This phase of the proceedings begins with a decision on the presentation of charges, the issuance of which is conditional on the authority to obtain certainty that a specific person has committed a crime.[43]

If, during the 'in personam' phase, the authority conducting the proceedings becomes certain that the person against whom the decision to present charges has been issued has committed the act, then he should prepare and submit an indictment to the court, formally ending the preparatory proceedings and the 'in personam' phase.

Before initiating jurisdictional proceedings, the competent court formally examines the indictment. It may be returned by the court to apply to Article 337 § 1 of the CCP in order to remedy the deficiencies. Moreover, under Article 14 § 2 of the CCP, the public prosecutor may withdraw the indictment until the commencement of the trial at the first main hearing. However, in this case, the public prosecutor cannot bring another indictment in the same case.[44]

5. Prosecutor's supervision of the proceedings

One of the procedural authorities involved in preparatory proceedings is the prosecutor. The Polish legal system does not contain a legal definition of a prosecutor; however, pursuant to Article 1 § 1 of the Law on the Public Prosecutor's Office, the Public Prosecutor's Office consists of the Prosecutor General, the National Prosecutor, other deputy prosecutors of the General Prosecutor and prosecutors of common organisational units of the prosecution service and prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, hereinafter referred to as the 'Institute of National Remembrance'.[45] The prosecutor acts as a public prosecutor, that is, he brings and supports the prosecution before the court. It is also responsible for conducting and supervising preparatory proceedings.[46]

According to the model of preparatory proceedings adopted, the prosecutor is *dominus litis* at this stage of the proceedings.[47] As indicated above, the prosecutor is investigating. It may delegate certain activities to other authorities.[48] At the same

43 Grzegorczyk 2008, p. 669.
44 Kmiecik 2010, p. 115.
45 Kardas 2012, pp. 7-49.
46 Chodkiewicz 2017, pp. 22-41.
47 Andrzejewski 2012, pp. 120–139.
48 Chodkiewicz 2017, pp. 22-41.

time, it provides guidelines and sets a deadline for the presentation of an investigation plan or a plan of specific investigative activities.

Due to the managerial role of the prosecutor in the preparatory proceedings, the legislator also granted him supervisory powers to the extent that he does not conduct proceedings. Its task is to ensure an efficient and compliant criminal procedure and its rules.[49]

Article 326 § 3 of the CCP indicates specific forms of supervision, which include: familiarisation with the intentions of the person conducting the proceedings, indicating the directions of proceedings and issuing orders regarding it; requesting the presentation of materials collected in the course of the proceedings; participation in the activities carried out by the investigators, conducting them in person or taking over the case for conduct; issuing orders or instructions; and amending and repealing orders and orders issued by the person conducting the proceedings.

It is also up to the public prosecutor to draw up an indictment in an investigation, to approve an indictment drawn up by the police in an investigation and bring it to court, or to issue a decision to discontinue, suspend, or supplement the investigation.[50] The prosecutor has 14 days from the date of closing the investigation or from receiving the indictment prepared by the police to take the indicated actions.

In addition, the public prosecutor is the instance control authority at this stage of the proceedings. *De jure*, he is responsible for the entire investigation; it must be carried out in accordance with the rules, respecting and informing about procedural safeguards, within a reasonable time.

6. Judicial factor in preparatory proceedings

The presence of a judicial factor in this phase of the proceedings is crucial; it is an expression of the measure of respect for human rights and freedoms in these proceedings.[51] Historically, Poland has had different models of judicial review of preparatory proceedings.[52]

Based on the CCP from 1928 to 1951 in Poland, an operative judicial body acted in preparatory proceedings: an investigating judge with a wide range of powers (evidence, decision-making, and control).[53] However, due to the Sovietisation of law in 1944, the judicial factor was limited. In 1951, the investigating judge was abolished, and

49 Kardas, 2012, pp. 7-49.
50 Kruszynski 2004, p. 328.
51 Eichstaedt 2008, pp. 391-398.
52 Eichstaedt 2009, pp. 58-87.
53 Eichstaedt 2008.

his powers were taken over by the prosecutor.[54] The court only performed incidental actions during preparatory proceedings. The CCP from 1969 petrified the changes introduced in accordance with the assumption of the Sovietisation of the law, while simultaneously allowing for the incidental presence of the court of a decision-making and supervisory nature.[55] In 1995, the wider presence of the judicial factor in preparatory proceedings was reverted, which was then used in the 1997 CCP.[56]

Under the current legislation, the judicial review of preparatory proceedings can manifest itself in three ways. The court may interfere in the preparatory proceedings by performing actions that include: decision-making—assumes the direct making of procedural decisions resulting from prior review of the preparatory proceedings in legal and substantive terms,[57] for example pre-trial detention (Article 250 § 1 of the CCP); control—exercising instance control of specific decisions of the preparatory proceedings authorities, that is, their examination of the correctness and comprehensiveness of the results of actions taken, for example,[58] appeal against a decision on securing assets (Article 465 § 2 of the CCP in conjunction with Article 293 § 4 of the CCP); evidentiary—taking certain procedural (evidence) actions reserved for the court, for example,[59] hearing a witness if there is a risk that it will not be possible to hear him or her at the hearing (Article 316 § 3 of the CCP).[60]

Since 1997, the model of judicial review of preparatory proceedings has been amended several times.[61] As a rule, these changes were not structurally interfering with the model because they maintained a balance between inquisitorial and adversarial with minor deviations. Only once was it decided to introduce an adversarial model of preparatory proceedings,[62] but this did not correspond to Polish conditions and the characteristics of jurisdictional proceedings, which is why it was quickly cancelled.[63]

However, the work on this amendment has allowed us to draw many interesting conclusions regarding the potential shape of criminal procedures, including the model of preparatory proceedings.[64] One of the postulates that appeared in the

54 Kulesza 1988, pp. 152-160.
55 Eichstaedt, 2009, p. 17.
56 Grzegorczyk and Tylman 2022, p. 922.
57 Malinowska-Krutul 2008, pp. 65-66.
58 Kulesza 1997, pp. 269–270.
59 Grajewski et al. 2006, p. 893.
60 Eichstaedt 2008.
61 Act of 27 September 2013 amending the act – Code of Criminal Procedure and some other acts, Journal of Laws 2013 item 1247.
62 Act of 27 September 2013 amending the act – Code of Criminal Procedure and some other acts, Journal of Laws. item 1247.
63 Act of 11 March 2016 amending the act – Code of Criminal Procedure and some other acts, Journal of Laws2016 item 437.
64 Kruszyński and Zbrojewska 2014, p. 55.

discussion was the introduction of a new judicial body—a judge competent in preparatory proceedings.[65]

To sum up, the participation of the judicial factor in preparatory proceedings should still be considered insufficient in relation to Western standards. Amendments that increase the participation of the judicial factor should be appreciated, for example, the proposal to introduce a 'friendly interrogation mode' for people with mental or developmental disorders, or the disruption of the ability to perceive or reproduce perceptions about which there is a justified fear that questioning in other ordinary conditions could adversely affect their mental state or would be significantly more difficult (Article 185e of the CCP).[66] Nevertheless, the model of judicial review of preparatory proceedings requires far-reaching changes in the spirit of increasing the presence of the judicial factor, which is always a measure of the observance of civil rights and freedoms at this stage of criminal proceedings.[67]

7. Options for terminating the procedure

From the perspective of this article, it is also important to discuss the ways in which procedural authorities conclude proceedings. This may take the form of three decisions: 1) the closure of proceedings (and the filing of an indictment with the court or a request to the court for a conviction at the hearing and the sentence of penalties and other penal measures agreed with the defendant), 2) discontinuation of proceedings (discontinuation of the investigation or investigation, application to the court for conditional discontinuance of proceedings, application from the court to discontinue the proceedings, and application of precautionary measures), and 3) stay of proceedings.

The decision to close proceedings should be made when the authority considers that the objectives of the preparatory proceedings have been achieved. In such cases, the authority conducting the proceedings should allow the suspect and his lawyer to finally familiarise themselves with the evidence.[68] Within 3 days of becoming acquainted with the material, the parties have the right to submit a request for the completion of the case file. In the absence of motions, the authority issues a decision to close the proceedings, announces them, or notifies the parties as well as their representatives and defenders.[69] Within 14 days of the closure of the investigation or the receipt of an indictment drawn up by the police in the enquiry, the prosecutor draws

65 Kruszyński and Zbrojewska 2014. p. 58.
66 Act of 13 January 2023 amending the Civil Procedure Code and certain other acts Journal of Laws 2023 r. item. 289, 535.
67 Waltoś and Hofmański 2020.
68 Wyciszczak 1995.
69 Tylman 1998, p. 69.

up an indictment or approves it and submits it to the court. An alternative solution is to apply to the court for a conviction at the sitting and the imposition of penalties or other penal measures agreed with the accused (Article 355 § 1 of the CCP).[70]

If the preparatory proceedings have not provided evidence to enable an indictment to be brought, the proceedings must be discontinued in accordance with Article 322 § 1 of the CCP. In such a case, pursuant to Article 323 of the CCP, the public prosecutor issues a decision on material evidence in accordance with the provisions of Articles 230–233 of the CCP. In the case of an enquiry, it is possible to discontinue and enter the act into the register of offences (Article 325f § 1 of the CCP).[71] If the conditions for the conditional discontinuance of proceedings are met, the prosecutor may also submit a request to the court to discontinue the proceedings (Article 336 § 1 of the CCP). If it is established that the suspect committed an act in a state of insanity and there are grounds for precautionary measures, the prosecutor, after closing the investigation, refers the case to the court with a request to discontinue the proceedings and apply protective measures.[72] The provision of Article 321 of the CCP shall apply *mutatis mutandis* (Article 324 § 1a of the CCP).

At every stage of the proceedings, also at the stage of preparatory proceedings, there is a possibility of absorption discontinuation.[73] This institution applies to cases of a misdemeanour punishable by imprisonment for up to 5 years, but only if the sentence imposed on the accused would be obviously pointless due to the type and amount of the sentence finally imposed for another crime, and the interest of the victim does not preclude it (Article 11 § 1 of the CCP).

Proceedings may be suspended if there is a long-lasting impediment to the proceedings, particularly if the accused cannot be apprehended or is prevented from taking part in the proceedings because of mental illness or other serious illness, the proceedings are suspended for the duration of the impediment (Article 22 § 1 of the CCP).[74] If the proceedings are not issued by the public prosecutor, they must be approved (Articles 325 and 325e § 2 of the CCP).

8. Summary

Notably, the Polish model of preparatory proceedings has evolved over the years. Initially, it was fully dependent on the legislation of the partitioning states. Then, in the Second Polish Republic, the legislator decided to create a model similar to that of

70 Waltoś and Hofmański 2020.
71 Kruszynski 2004, pp. 315-317.
72 Waltoś and Hofmański 2020.
73 Łagodziński 2004.
74 Czapliński 2014.

the French Republic. In connection with the process of Sovietisation, there has been a black period in the history of the development of the Polish model of preparatory proceedings since 1944. The judicial factor was limited, and an extensive apparatus for the prosecutor's office and services was created. This situation lasted until the nineties of the twentieth century. Along with the political changes, the legislator began to consider the observance of human rights and freedoms in the model of preparatory proceedings. The culmination point was the adoption of the CCP in 1997.

The abovementioned legal act has been amended several times over the last 26 years. However, its current sound does not differ drastically from that of the original version. It should be noted that the model of preparatory proceedings contained therein fulfils the basic framework resulting from legal acts of international rank binding in Poland, that is, the European Convention on Human Rights[75] and the International Covenant on Civil[76] and Political Rights. Nevertheless, there are institutions that need to be improved in the spirit of rule of law and objectivity.

The presence of a judicial factor in preparatory proceedings is still insufficient in relation to Western countries. It is worth considering the postulate of introducing a judge competent in preparatory proceedings, who would be an efficient body at this stage of the proceedings and somewhat guarantee the observance of civil rights and freedoms. In addition, it would be necessary to define a catalogue of its activities: decision-making, control, and evidence.

In addition to his or her tasks in the preparatory proceedings, the preparatory judge could also supervise the application of operational and reconnaissance activities by the competent authorities. What should be considered, given the connection between the matter and criminal proceedings?

In connection with the introduction of the institution of a preparatory judge in preparatory proceedings, the roles of the police (and other services with criminal procedural powers) and the prosecutor's office should be redefined. The activities of these authorities should be linked to the proposed judicial authority (preparatory judge).

The proposed changes would have a positive impact on the preparatory model. They would break with the post-Soviet and undemocratic traditions of criminal procedure and guarantee the rule of law, objectivity, and judicial protection of human rights at this stage of criminal proceedings.

75 Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, subsequently amended by Protocols Nos 3, 5 and 8 and supplemented by Protocol No. 2, Journal of Laws 1993 no 61 item 284.

76 The International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966, Journal of Laws 1977 no 38 item 167.

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