From Questioning Notes to Audiovisual Videoconferencing — Reflections on the Evolution of the Model of Hearing a Witness Against the Background of the Solutions Adopted in the Code of Criminal Procedure of 1928 and 1997

Agnieszka Choromańska
Police Academy in Szczytno, Poland

Abstract. *The paper addresses legal solutions concerning the model of witness interviewing. The discussion is of comparative nature, as it refers both to the regulations contained in the Code of Criminal Procedure of 1928, as well as to the provisions of the current criminal procedure. It aims at a synthetic analysis of key changes in the model of interviewing a witness taking into consideration historical factors, as well as their impact on the current shape of the provisions in the Criminal Procedure Regulation. While reviewing legal solutions, the author pays special attention to the process of questioning at a distance supported by devices enabling simultaneous image and sound transmission. This issue is discussed in many aspects, taking into account the views of the doctrine and the analysis of case law. Apart from the assessment of the current legal status in genere, the paper also presents the proposals of solutions in the subject matter.*

DOI: 10.5604/01.3001.0012.8407
http://dx.doi.org/10.5604/01.3001.0012.8407

Keywords: Interviewing procedure, documenting the interview, criminal proceedings, distance interview, witness protection

Introduction

The Code of Criminal Procedure of 19 March 1928[1] in Book III entitled Evidence in Article 98 (the first provision of Chapter I regulating witness-related issues) stated that every person summoned by the court as a witness was required to appear at the place, date and time indicated in the summons and remain until their release. Therefore, this provision introduced a general rule, according to which it was the procedural body that chose the place and time of the hearing. At the same time, in subsequent provisions, the Act provided for exceptions to the rule. Article 99 of the Code of Criminal Procedure of 1928 allowed for the possibility of hearing a witness in his flat due to his/her illness or disability, which made it impossible for a witness to appear at a place indicated by the authority. It is also worth mentioning

[1] Ordinance of the President of the Republic of Poland of 19 March 1928 — Provisions introducing the Code of Criminal Procedure. *Journal of Laws,* 1928, No. 33, item 313; here in after: IPL.

that the Article 100 of the Code of Criminal Procedure of 1928, which stated that when the President of the Republic of Poland was to be heard, the court applied to him in writing to determine the place and time of the hearing. Naturally, the idea of the indicated solutions is reflected in the current provisions of criminal procedure (e.g. Articles 177 and 285 of the Code of Criminal Procedure), however, there is no doubt that the scope of individual regulations, for obvious reasons, presented itself relatively modestly. This, however, in no way diminishes the solutions adopted. It should be noted that after regaining independence in 1918, three separate and different penal and procedural regulations were in force in the lands of the Polish state[2]. The unification of the Polish criminal procedural law was therefore a huge effort. Although many institutions of the partitioning states were taken over, the first Polish Code of Criminal Procedure was characterised by original solutions and an extremely important thing — it was characterised by a high level of legislative techniques[3].

When attempting to indicate the stages of the hearing and their course, one should look at the content of Articles 107–115 of the Code of Criminal Procedure of 1928. The basic penal and procedural regulation ordered that a witness, after being informed about "responsibility for false testimony", should be asked about the name, surname, age, job, place of residence and attitude towards the parties. The term "above all" clearly suggested that the indicated scope of information is not a closed catalogue, but a necessary minimum. Additionally, Article 108 of the Code of Criminal Procedure of 1928 provided that the court at the main hearing would take the following oath from each witness: "I swear to the Lord God Almighty and Omniscient that I will speak the truth without hiding anything from what is known to me. Yes, Lord God, help me. (Article 111 of the Code of Criminal Procedure of 1928). Those who professed the Christian religion took the oath before the cross, and those who professed "the Mosaic religion holding their right hand on the track — 2 Rev. Moses 20 chapter 7 verse". Before taking the oath, the court warned the witness about the meaning of this act and responsibility for false testimony. At the same time, the 1928 Code of Criminal Procedure provided for cases of exclusion. Among the persons taking the oath of Article 110 of the Code of Criminal Procedure of 1928, there were excluded "minors" up to the age of fourteen, persons who, due to their mental illness or other disruption of mental activities, are not aware of the significance of the oath and persons suspected of participating in an act which is the subject of proceedings or of a criminal activity closely related to the activity of the accused. Moreover, pursuant to Article 108 of the Code of Criminal Procedure of 1928, the possibility of resigning from taking the oath was also taken into consideration when the parties released the witness from taking the oath and the court did not consider it necessary. Finally, the hearing of the investigating judge did not require taking the oath either, unless there was a justified suspicion that the witness would not be able to appear at the main hearing or that he would not testify the truth without the oath. The last of the indicated derogations requires

[2] In the lands of the former Kingdom of Poland and in the eastern provinces — the Russian Code of 1864, in Upper Silesia and in the former Prussian Quarter — the German Code of 1877, in Cieszyn Silesia and Galicia —the Austrian Code of 1873 and in the area of Spiš and Orava — the Hungarian Code of 1896.

[3] Bardach J, Leśnodorski B, Pietrzak M, Historia ustroju i prawa polskiego. Warsaw, 1998, p. 569.

a slightly more in-depth commentary. As the investigation conducted at that time, pursuant to the provisions of the Code of Criminal Procedure of 1928, was aimed not so much at preserving traces and evidence of the crime, but only at collecting information material[4], as a rule, the Prosecutor's Office and police did not conduct a formal interviewing of suspects and witnesses[5]. The activities of the investigation were to be recorded in the form of records (Article 243, paragraph 3 of the Code of Criminal Procedure of 1928), which in turn were to constitute information material for a public prosecutor, not a court[6]. Naturally, at this stage, judicial activities could have been carried out by an investigating judge or a magistrate court, whenever it was necessary to secure evidence, and any delay would have threatened "the disappearance of traces or criminal evidence[7]. However, it is worth emphasising that the provisions introducing the Criminal Procedure Code[8] provided for separate solutions in this respect from the code itself. Indeed, apart from the indicated derogation from the rule of personal conduct of activities recorded by a judge, Article 20 § 1 of the Polish Criminal Code provided for the possibility for the prosecutor to carry out particular court activities (i.e. an open catalogue of activities) in the course of an investigation, whenever the prosecutor considered it necessary. In the

[4] Kryczyński O, Dochodzenie według K.P.K. w teorii i praktyce. *Głos Sądownictwa,* 1930, No. 4, p. 224.

[5] Stefański R.A, Aktualny model postępowania przygotowawczego w polskim procesie karnym. *Ius Novum,* 2007, No. 2–3, p. 66.

[6] However, it should be stressed that pursuant to Article 245, paragraph 2 of the Code of Criminal Procedure of 1928, the records of the investigation were attached to the request to conduct the investigation. As a result, there was hidden evidence and, at the same time, it was available to the court, because it was a part of court files. *See more:* Mogilnicki A, K.p.k. *Gazeta Sądowa Warszawska,* 1936, No. 8, p. 113. Cf.: Siewierski M, Critical remarks on investigation according to the Code of Criminal Procedure, *Archiwum Kryminologiczne*, 1993, Vol. 1, p. 108. With time, the practice of circumventing the ban on reading records at the trial by interviewing officers who wrote records as witnesses to the circumstances contained therein, including those concerning the activities conducted, has developed. This pragmatics was even approved by the Supreme Court, which stated that witnesses' testimonies about events in the course of the investigation do not constitute records and are not intended to reproduce the content, but are merely a self-contained representation of the observed facts: heard and seen. Therefore, in the opinion of the Supreme Court in Art. 337 § 2 of the Code of Criminal Procedure of 1928, the legislator did not intend to prohibit the reproduction of the results of the investigation. *See more:* Judgment of the Supreme Court of 27 March 1930, II 3 K 80/30, ECR 155/1930.

[7] Pursuant to Article 251 of the Code of Criminal Procedure of 1928, at the request of the investigating judge or magistrate court there were carried out activities in person, if necessary: 1) interrogation of the suspect, 2) undertaking an act "identifying criminal evidence", where it could be assumed that at the main hearing without reading the protocol of this act "evidence could not be reconstructed", 3) interviewing under oath a witness 4) interviewing under oath a witness whose testimony was important and there was a fear that the witness would not be able to appear at the main hearing, 4) interviewing a witness under oath whose testimony was important and there was a fear that a witness without an oath would not tell the truth, 5) examination of the suspect's mental state. The above mentioned activities were undertaken — in accordance with Article 252 of the Code of Criminal Procedure of 1928. — Also at the request of the injured party or suspect, and in urgent cases — ex officio.

[8] Ordinance of the President …, *op. cit.,* item 314.

light of § 2 of the aforementioned provision, such activities could also be performed by the state police, if in a given case it was commissioned by the prosecutor, exchanging activities or defining their scope. These activities were documented in a protocol in which the provision in question was invoked, additionally in a police report, noting the prosecutor's order. The activities carried out in accordance with statutory requirements had the force of court proceedings, and the protocols — the force of court protocols, which are subject to reading at the trial.

Returning to the main stream of considerations, it is particularly appropriate to devote oneself to the procedure of hearing a witness. From the content and order of the provisions of the Code of Criminal Procedure of 1928, the following scheme of this activity can be followed: cautioning about criminal responsibility, asking about the name, surname, age, etc. The procedure of examination of a witness can be described as follows (Article 107 of the Code of Criminal Procedure of 1928), taking the oath (or resignation from taking the oath, Articles 108–114 of the Code of Criminal Procedure of 1928), and then "inviting the witness to tell him/her everything that he/she knows about the case", and then moving on to the stage of asking questions (Article 115 of the Code of Criminal Procedure of 1928). What is important, the court was obliged to inform the prosecutor and the suspect or his/her defence lawyer (Article 253, paragraph 1 of the Code of Criminal Procedure of 1928)[9]. The suspect was only brought in if the court considered it necessary. Therefore, if the parties appeared at the place where the activities were taking place[10], they had the right not only to be present at these activities, but also to ask questions both witnesses and expert witnesses (Article 253 § 2 of the Code of Criminal Procedure of 1928)[11]. The indicated solutions were appropriate in the event that the "identifying criminal evidence" activity (Article 251 (b) of the Code of Criminal Procedure of 1928) or the hearing under oath of a witness towards whom there was a fear that he/she would not be able to appear at the main hearing (Article 251 (c) of the Code of Criminal Procedure of 1928), a judge was substituted by the prosecutor or the state police (Article 255 in conjunction with Article 254 of the Code of Criminal Procedure of 1928). Testimonies and statements of the persons interviewed were to be included in the protocol with possible accuracy (Article 234 of the Code of Criminal Procedure of 1928), and at the same time the persons taking part in the activities could demand that everything that concerned their rights or interests was

[9] At the same time, § 3 of Article 253 of the Code of Criminal Procedure of 1928 provided that "If the parties were not notified in advance of the date of the court action, they should be notified of its completion".

[10] Non-appearance of the parties did not halt the activities.

[11] These provisions also applied to investigation-related activities, but only if the investigating judge took actions which could not be repeated at the trial. In other cases, only the public prosecutor had the right to be present at all investigation-related activities. Admission of other parties to the proceedings depended on the discretion of the investigating judge, Article 258 of the Code of Criminal Procedure of 1928. The then provisions also provided for sui generis legal aid. If there was a need to interview a person residing in another district, the investigating judge asked the local investigating judge or the magistrate court to do so. However, when the circumstances of the case required it, Article 270 of the Code of Criminal Procedure of 1928 allowed the investigating judge to summon a person residing in another district, or even to perform an activity outside his/her district.

to be included in the protocol (Article 235 of the Code of Criminal Procedure of 1928). Pursuant to Article 237, paragraph 2 of the Code of Criminal Procedure of 1928, the protocol was signed by all persons taking part in the activities, and before signing it, the authority was obliged to read it and record this fact in the protocol. The legislator allowed for the possibility of raising objections to the content of such a protocol, ordering them to be included in the protocol, as well as any kind of amendments and additions that were to be placed at the end of the protocol before signing or "in a separately added footnote". (Article 238 of the Code of Criminal Procedure of 1928). An extremely interesting solution was contained in Article 239 of the Code of Criminal Procedure, which dealt with the minutes of the hearing, in respect of which the parties' right to demand the correction of the minutes was allowed, indicating inaccuracies or omissions. This right remained until the court, in which the minutes of the hearing were drawn up, sent the files to a higher instance. If the presiding judge and clerk to the court acceded to the request of the parties, the presiding judge ordered a rectification of the minutes, otherwise he sought the opinion of the judges who took part in the trial. In the event of disagreement, all dissenting opinions were annexed to the minutes. This regulation illustrates an extremely important role of the clerk to the court. The trial protocol could have been written by a judge who did not perform the recorded activities, a court trainee or an official of the court secretariat (Article 231 § 1 of the Code of Criminal Procedure of 1928). At the same time, Article 19 of the Polish Criminal Code provided that the protocol "may be written by the judge who performs the registered activity". Exceptionally, in the case of taking actions outside the seat of the court and in the absence of the persons referred to above, the Act allowed for the appointment as another credible person, but after taking the oath from him/her. Appropriate application of the provisions of Article 111 (2) and (3), 112, 113 (1) and (3) and 133 of the Code of Criminal Procedure of 1928 resulted in the fact that before taking the oath, the judge warned the clerk to the court of the meaning of this act, and then the clerk to the court took the oath (depending on the religion — before the cross, holding his right hand on the track or in another form specified in the regulation of the President of the Republic issued on the basis of a resolution of the Council of Ministers), repeating after the judge or reading out the following rota: "I swear to the Lord God Almighty and Almighty, that I will perform the tasks entrusted to me with all conscientiousness and impartiality. Yes, Lord God, help me. Additionally, Article 232 of the Code of Criminal Procedure of 1928 provided that the clerk to the court was properly subject to the exclusions specified in the provisions of Articles 39–43 of the Code of Criminal Procedure of 1928, and any doubts and disputes were finally resolved by a competent judge. Consequently, a person could not act as a clerk to the court if:

was directly involved in the case,

1) was the spouse of the prosecution lawyer, victim, accused, or their attorney or defence lawyer,
2) was a relative or affinity in a straight line without limitation, and in a lateral line up to the degree between the children of siblings of persons mentioned in point 2 above, or if it was related to one of these persons due to adoption, legal care or guardianship,
3) in the same case was examined as a witness or expert witness, or witnessed the act for which the case was pending,

4) participated in the same case as a prosecutor, defence counsel or as an attorney of the prosecutor or civil plaintiff,
5) investigated the same case,
6) took part in the contested decision at a lower instance,
7) if the judgment is set aside, if it participated in its delivery, unless the Act provides otherwise.

As mentioned earlier, the court ruled on the exclusion of the clerk to the court. Also when, regardless of the reasons indicated above, the person appointed to take minutes submitted a request for exclusion or a party submitted such a request, claiming the existence of a relationship of such a nature that it could raise doubts as to its impartiality between the clerk to the court and one of the parties.

The above mentioned solutions should also apply to activities undertaken pursuant to Article 254 and 255 of the Code of Criminal Procedure of 1928, i.e. when instead of a judge, judicial activities in the investigation were undertaken by a prosecutor or the state police. While documenting these activities in accordance with the requirements for court records, it was pointed out that an official of the prosecutor's secretariat or a state police officer should be appointed as a clerk to the court. However, if it was not possible to take the indicated clerk to the court, the provision of Article 256 § 2 of the Code of Criminal Procedure obliged to appoint two adult local residents of impeccable opinion, able to read and write, who with a signature stated the conformity of the protocol with the course of activities. Such a participation was obligatory. An unjustified refusal to participate in such an activity was then punishable by a fine, for instance a failure to appear as a witness under the procedure of Article 117 of the Code of Criminal Procedure of 1928. However, while the indication of the entity entitled to apply the penalty for the insubordination of foster persons does not raise any doubts, some hesitation comes into play in the case of determining the decision-maker with regard to the exclusion of the clerk to the court (foster person) in the case of activities carried out in accordance with Article 254 and 255 of the Code of Criminal Procedure of 1928. This issue was not explicitly regulated by the law. However, bearing in mind that the aforementioned activities had the force of court proceedings and protocols drawn up in accordance with the provisions of Article 256 of the Code of Criminal Procedure of 1928. If the decision on exclusion was then the responsibility of the "host" of actions, the prosecutor's office or the state police, it may be concluded that the decision on exclusion was then the responsibility of the "host" of actions, the prosecutor's office or the state police.

It seems that the content of Article 140 of the Code of Criminal Procedure of 1928 should be read in the same way, where it was explicitly indicated that the court shall call for an appropriate translator, if necessary:

1) hearing of a deaf or silent person with whom the court cannot communicate directly,
2) hearing a person who does not speak a language that the court understands;
3) a translation of a letter drawn up in a foreign language.

This provision, through the adopted formula ("with which the court cannot", "for the court"), emphasises the role of the interpreter as an assistant to the procedural body. There is no doubt, however, that this solution was also of a guarantee nature, protecting the rights of all participants in the proceedings and, at the same time, favouring

the achievement of the state of substantive truth. At the same time, the aforementioned principle of material truth was not absolute. At that time various obstacles in the form of other principles or values, which also had to be realised and respected by its participants, were noticed. Article 101 of the Code of Criminal Procedure of 1928 clearly indicated that the following persons must not be heard as witnesses:

1) a clergyman as to the facts of which he learned in confession,
2) the accused's defence counsel as to the facts of which he became aware while providing legal advice or conducting the case.

The Code of Criminal Procedure of 1928 also provided for a number of relative prohibitions of evidence. In the case of public and military officials, even if they were no longer in active service, it allowed them to be questioned as witnesses as to the circumstances to which the obligation of official secrecy extended, after obtaining the consent of the current or recently superior official authority, while stressing that consent may be refused only if giving testimony could cause serious damage to the state (Article 103 of the Code of Criminal Procedure of 1928). Also persons covering themselves with professional secrecy (apart from the accidents described above and regulated in Article 101 of the Code of Criminal Procedure of 1928) were given special protection. The Article 102 stated that if a witness refuses to testify due to professional secrecy and the court does not consider it possible to release him, the hearing is held in camera. Moreover, Article 104 of the Code of Criminal Procedure of 1928 enumerated the entities which had the right to refuse to give evidence. These are:

1) the accused's spouse (even after the marriage has ended),
2) a relative and relative of the accused in a straight line,
3) a relative of the accused in the lateral line up to the degree between siblings' children,
4) a brother and a sister of the defendant's spouse,
5) a person related to the accused by adoption (also after the termination of the adoption relationship).

As a consequence, if a person gave testimony and then stated that they wished to exercise their right to refuse, their previous testimony could not serve as evidence and could not be read or reproduced (Article 105 of the Code of Criminal Procedure of 1928).

It should be stressed, however, that the paragraph 3 of the aforementioned Article 104 of the Code of Criminal Procedure of 1928 contained a significant and binding instruction to notify persons of their right to refuse to testify.

At the same time, it was assumed that a witness has the right not to answer questions concerning the circumstances, the disclosure of which could expose them or a person remaining in a relationship with them to the criminal responsibility, referred to in Article 104 of the Code of Criminal Procedure of 1928.

From the perspective of the solutions adopted in the current Criminal Procedure Code, particular attention should be paid to the admissibility of questioning a witness as an expert in a given case. Article 125 (2) of the Code of Criminal Procedure of 1928 explicitly states that "the fact that someone is a witness in a given case does not preclude examination them as an expert". (cf. Article 196 paragraph 1 *in fine* of the Code of Criminal Procedure).

Particularly important solutions, forming the model of questioning, are also included in the laws regulating the proceedings at the main hearing. Each witness

was summoned to the courtroom separately and questioned "in the absence of those witnesses who had not yet testified". (Article 336 of the Code of Criminal Procedure). In cases of fear, that the presence of the accused could have a restraining effect on the testimony of a witness (or an expert), the court could exceptionally order the accused to be expelled from the courtroom for the duration of the hearing (Article 335, paragraph 2 of the Code of Criminal Procedure). Article 304 paragraph 2 of the Code of Criminal Procedure of 1928 also states that the chairperson invalidated questions which they considered inappropriate. It is also worth emphasizing that in a situation where a witness could not appear at the trial and had not previously given evidence as to the circumstances which the court considered necessary, the court interrupted or postponed the trial and ordered the examination of the witness to one of its members or to the magistrates' court in the district of which the witness was staying (the parties, provided that they arrived, had the right to be present at that act and to ask questions; Article 354 of the Code of Criminal Procedure of 1928)[12]. This regulation even provokes the formulation of a question about the admissibility of reading the minutes of the hearing held before the hearing. This solution was provided for in Article 338 of the Code of Criminal Procedure of 1928, which stated that reading, at the hearing, the protocol of questioning a witness, drawn up in an investigation (pursuant to Articles 251–257 of the Code of Criminal Procedure of 1928).) could only take place if the *primo* witness did not appear at the trial due to obstacles that could not be removed or were too difficult to remove, *secundo* — the witness appeared, testified differently than in the proceedings before the trial, or refused to testify, or stated that they did not remember certain details and finally *tertio* — the parties agreed to read the testimony of the witness who did not appear before the court.

Summing up the deliberations, it should also be pointed out that if there were contradictions between the testimonies of witnesses, the court could order "putting them in one's eyes", and thus conduct a confrontation (Article 116 of the Code of Criminal Procedure of 1928; now: Article 172 of the Code of Criminal Procedure of 1928).

The analysis of the provisions of the Code of Criminal Procedure of 1928 shows that in case of insubordination on the part of a witness, the authority conducting the hearing had disciplinary instruments at its disposal. Articles 117–120 of the Code of Criminal Procedure of 1928 provided for the following penalties:

1) a fine of up to five hundred zlotys[13] and the payment of costs resulting from the postponement of the hearing[14] — or unjustified failure to appear as a witness, as well as in the case of an unjustified refusal to testify or take an oath,

[12] It should be mentioned that Article 446 of the Code of Criminal Procedure of 1928 concerning proceedings before the magistrates' court indicated that if a witness lived in a district of another municipal court and appearing would be too inconvenient for them, the court applied to the local magistrates' court for their hearing. In this case, the appropriate application of Article 253 paragraphs 1–3 of the Code of Criminal Procedure of 1928 was also taken into account.

[13] The fine was converted into an arrest for up to two weeks if it could not be recovered.

[14] If the case was postponed due to failure to appear or refusal to testify or to take the oath by several persons, all of them were jointly and severally liable for the costs associated with the postponement of the trial.

2) a fine of up to one thousand zlotys[15] — with respect to a witness who refuses to give testimony or take the oath again,
3) forced bringing in[16] — if necessary, in case of unjustified failure to appear as a witness,
4) arrest for a period not exceeding one month — regardless of the fine imposed on a witness refusing to testify or take the oath.

At the same time, Article 244, paragraph 1 of the Code of Criminal Procedure of 1928 stated that both the public prosecutor and the state police had the right to summon persons to come forward with an announcement of the consequences provided for in Article 117 of the Code of Criminal Procedure of 1928. However, the fine for unjustified failure to appear was ordered by an investigating judge or a magistrates' court at the request of the public prosecutor or the state police, and forced bringing in of a person could also be ordered by the public prosecutor.

When applying these considerations to the regulations currently in force, it is necessary to make a few systematizing remarks. Since the entry into force of the first Polish Code of Criminal Procedure, a number of changes have been made, both in the years 1932–1938 and in the 1960s with the adoption of the Act of 19 April 1969Since the entry into force of the first Polish Code of Criminal Procedure, a number of changes have been made, both in the years 1932–1938, and in the 1960s with the adoption of the Act of 19 April 1969, the Code of Criminal Procedure[17], as well as on 1 September 1997, when the Act of 6 June 1997, the Code of Criminal Procedure entered into force[18]. Finally, in addition to the numerous individual adjustments, the extensive systemic changes that are transforming the criminal trial model under the Law of 27 September 2013 must not be overlooked either[19], *de facto* in force from 1 July 2015 to 14 April 2016. However, the changes implemented at that time not only failed to consolidate themselves *in praxi*, but — due to the long period of *vacatio legis* and the corrections made in the meantime[20], as well as temporal regulations — were not subject to a reliable and distanced evaluation which would justify their rejection. s a result, as of 15 April 2016,[21] there was a return to solutions

[15] In this case, when it was not possible to collect the fine, the penalty was converted into an arrest for up to one month.

[16] The court applied to the military authorities for forced bringing in and punishment of a person subject to military jurisdiction, as well as for a measure in the form of arrest not exceeding one month.

[17] Act of 19 April 1969, the Code of Criminal Procedure. *Official Journal*, 1969, No. 13, items 95 and 96.

[18] Act of 6 June 1997, Code of Criminal Procedure. *Official Journal*, 1997, No. 89, item 555.

[19] Act of 27 September 2013 amending the Act — the Code of Criminal Procedure and some other acts. *Official Journal*, item 1247.

[20] Until 1 July 2015, that is the date of entry into force of the Act of 27 September 2013, procedural provisions were additionally modified by the Act of 28 November 2014 on protection and assistance for victims and witnesses (*Official Journal,* 2015, item 21) and by the Act of 20 February 2015 amending the Act — Penal Code and certain other acts (*Official Journal*, item 396), of which the latter amended the wording of both the provisions implemented by the September amendment and the "original" Code of Criminal Procedure before the amendments of 2013.

[21] Pursuant to the Act of 11 March 2016 amending the Act — the Code of Criminal Procedure and certain other acts. *Official Journal*, item 437.

creating and inclining the inquisition model of the penal trial, albeit with numerous changes, and even solutions constituting a kind of novelty[22]. In connection with the adoption of the concept of re-activation of the court, the amendment also influenced changes in the area of hearing activities. The previous reservation resulting from the Article 172 paragraph 2 of the Code of Criminal Procedure, gave the possibility of asking questions by members of the adjudicating panel only in exceptional cases, justified by special circumstances. Naturally, this regulation is one of many that have had a significant and often fundamental impact on the model of the hearing. Unfortunately, due to the limited framework of this publication, it is not possible to recall them all. It is also impossible to make their unambiguous assessment. The short period of operation of the originally amended regulations and legal structures (only from July 1, 2015 to April 15, 2016) does not allow to diagnose real problems, which are born *in praxi*, after all. The problem is also the lack of any empirical research on the functionality of the adversarial system and the lack of jurisprudence of the Supreme Court and appellate courts in this respect. There is no doubt, however, that the current shape of the interviewing model is a resultant of solutions adopted in individual codes of criminal proceedings, functioning over the years, which, moreover, have been historically conditioned. It is therefore necessary to look at the regulations currently in force to the extent that they regulate the issue of the hearing in a manner different from those previously analysed, as well as to indicate the philosophy and direction of these changes.

While adhering to the order and systematics adopted in relation to penal prosecution solutions of 1928, it falls to start with the first provision "opening" the chapter 21 of the Code of Criminal Procedure, that is, 'Witnesses', which introduces, in an appropriately unchanged wording, the obligation to appear at the request of the authority and to give testimony (Article 177, paragraph 1 of the Code of Criminal Procedure), while allowing the already established derogation from the rule of hearing at the seat of the authority in order to carry out activities in the place of residence of a witness in case of disability and serious illness, but also other insurmountable obstacle.[23] However, in the paragraph 1a of the aforementioned Article 177 of the Code of Criminal Procedure,[24] the legislator

[22] An example of such a solution could be an extraordinary appeal in the form of a complaint against a judgment of the court of appeal. Pursuant to Article 539a paragraph 1 of the Code of Criminal Procedure, the appeal is to be available to the parties against the judgment of the appeal court repealing the judgment of the court of first instance and remitting the case for re-examination, and it is to be filed with the Supreme Court.

[23] An open catalogue of premises constituting the basis for the examination of a witness at the place of stay should be considered as an accurate and rational construction, adequate to the needs of the practice. At the same time, the legislator abandoned the special procedure of summoning a witness to the President of the Republic of Poland.

[24] The solution introduced by Article 1 (56) of the Act of 10 January 2003 amending the Act — the Code of Criminal Procedure, the Act — provisions introducing the Code of Criminal Procedure, the Act on the crown witness and the Act on the protection of classified information (*Official Journal,* No. 17, item 155). A significant change, in particular excluding the exclusive voice transmission and modifying the nature of the parties' participation in the activities, was introduced by Article 6 (1) of the Act of 31 August 2011 amending the Act on the security of major events and certain other acts (*Official Journal,* No. 217, item 1280). It should be noted that the first step towards establishing the institution of hearing

provides for an innovative solution, namely a new form of hearing of a witness — at a distance using technical devices enabling simultaneous transmission of image and sound. Since the regulation in question is situated between the paragraphs 1 and 2 of Article 177 of the Code of Criminal Procedure, the first of which specifies two rudimentary duties of a witness and the other, constituting a *lex specialis*, statutes exceptions to the obligation to appear at the seat of the hearing authority, it seems justified to conclude that the *de jure* application of the paragraph 1a will be justified both in the case of illness, disability of a witness or other indelible obstacles, and also when the circumstances indicated will not occur, but will be different in the opinion of the hearing authority, justifying the implementation of the procedure in question. However, this does not imply unlimited discretion on the part of the authority. The examination of a witness at a distance is conditional on the occurrence of circumstances preventing or hindering his appearance. Thus, this solution does not statute the condition of exempting a witness from the obligation to appear, but only formulates the possibility of appearing at a place other than the seat of the hearing authority[25]. P. Wiliński, the *ratio legis* of this solution, sees the need to eliminate the lengthiness of proceedings, as well as the need to avoid excessive costs associated with bringing a witness to the courtroom procedural economy in the broad sense of the term justifies the application of the provision in question not only in a situation where there is a significant distance between the procedural body and the place of residence of the witness,[26] but also, for example, in relation to a prisoner whose bringing into the seat of the body would entail excessive costs, or to an elderly person who is neither ill nor handicapped, or whose place of residence is not far away from the seat of the procedural body[27].

These general observations must be complemented by an indication of solutions that explicitly define the manner and nature of the examination of a witness at a distance. Taken it altogether, the synthetic list is as follows:

1. the provision of paragraph 1a may be applied accordingly to the hearing of an expert (Article 197 paragraph 3 of the Code of Criminal Procedure in conjunction with Article 177 paragraph 1a of the Code of Criminal Procedure), as well as an interpreter (Article 204 paragraph 3 of the Code of Criminal Procedure, in conjunction with Article 197 paragraph 3 of the Code of Criminal Procedure, in conjunction with Article 177 paragraph 1a of the Code of Criminal Procedure);

a witness at a distance was the form of conducting this activity with regard to an incognito witness (Article 184 of the Code of Criminal Procedure), functioning in criminal proceedings since the entry into force of the Code of Criminal Procedure of 1997.

[25] Grzegorczyk T, Commentary to Article 177 of the Code of Criminal Procedure, [in:] Code of Criminal Procedure. Comments. Krakow, 2004.

[26] Hofman P emphasizes only the distance and place of residence of the witness as the only circumstance justifying the application of Article 177 (1a) of the Code of Criminal Procedure. *See:* Hofmański P, Sadzik E, Zgryzek K, Code of Criminal Procedure. Comments, Vol. I. Warsaw, 2004, p. 741.

[27] Dutkiewicz M, Examination of a witness at a distance in the light of Article 177 paragraph 1a of the Code of Criminal Procedure. *Palestra,* 2008, No. 3–4, p. 76.

2. the interview at a distance may be implemented in both pre-trial and judicial proceedings[28];
3. the hearing by means of technical devices is *in praxi* an audiovisual video-conferencing which fully respects the principle of directness; the procedural body is in fact in direct contact with the source of evidence[29], and has access to primary evidence while guaranteeing control of the procedural body, in particular the procedural rights of the accused (suspect) to whom the testimony relates, from checking whether the witness testifies without any pressure to allowing the witness to be subject to a kind of control by asking questions, as well as the possibility to observe non-verbal behaviour, almost identical to that of testimony given directly before the procedural body.

In order to conclude this part of the discussion, it should be noted that the institution of the hearing at a distance, in view of the current degree of preparation of the justice system in relation to technical innovations, although desirable and leading to acceleration and reduction of procedural costs, requires, first of all, financial outlays aimed at implementing the necessary technical solutions, but also at developing a framework of activities for procedural guarantees, taking into account the psychology of the hearing and the methodology of conducting activities in this form. This is all the more so because under Article 2 (3) of the Act of 13 June 2013 amending the Acts — Criminal Code and the Code of Criminal Procedure, the obligatory application of Article 177 paragraph 1a was introduced when hearing a minor witness who at the time of hearing was 15 years of age and there is a concern that the direct presence of an accused of crimes committed with the use of violence or unlawful threats or specified in chapters XXV and XXVI of the Penal Code during hearing a witness could have a restraining effect on his/her

[28] Insofar as the provision of paragraph 1a regulates the participation — at the stage of court proceedings — of a court clerk, assistant judge or official employed in the court in whose district the witness is staying, at the place where the witness is staying; the stage of preparatory proceedings is omitted by silence. Despite the lack of statutory regulations in this respect, the performance of activities should remain within the prosecutor's sphere of competence, while a police officer undertaking investigative activities should stay in the place of a witness's residence. It seems that the presence of a specialist alone is not sufficient. It is worth emphasizing that the role of the entity taking part in the activities at the witness's place of residence is limited to activities of a technical and organizational nature, i.e. to checking the appearance, personal data and supervising the preparation and proper operation of the equipment (without any substantive impact on the course of the hearing), etc. For example: the sentence of the Court of Appeals in Katowice of 6 May 2009r, II AKa 394/08, KZS 2009, No. 9, p. 83; the sentence of the Court of Appeals in Cracow of 5 October 2010, II AKa 10/10, KZS 2011, No. 4, p. 41. *Compare*: Świecki D (Ed.), Code of Criminal Procedure. Commentary. Warsaw, 2013, p. 579. What is important, the hearing at a distance at the stage of preliminary proceedings may also come into play in the case of implementation of Article 316, paragraph 3 of the Code of Criminal Procedure, therefore, if, due to the risk of impossibility of hearing a witness in the course of court proceedings, the hearing is conducted by the court.

[29] The advantage of the institution of distance interviewing is also noticeable in relation to the reading of the minutes from the testimonies previously given. Compare: the sentence of the Court of Appeals in Katowice of 1 January 2008, II AKa 382/08, *Bulletin of the Court of Appeals* in Katowice, 2008, No. 2, p. 14.

testimony or have a negative impact on his/her mental state (Article 185b paragraph 2 of the Code of Criminal Procedure; a similar solution is provided for in Article 185a paragraph 3 of the Code of Criminal Procedure, with respect to an adult injured by crimes specified in Articles 197–199 of the Criminal Code in the case of re-hearing them as a witness).

It is therefore concluded that, in addition to the benefits of distance interviews of an organisational[30] and economic nature, psychological considerations are also at stake. What is more, in the case of an interview with an anonymous witness (Article 184 of the Code of Criminal Procedure) and a key witness[31] it is necessary to talk about much more important issues — the security and confidentiality of the witness's identity, personal data, image and voice.

Undoubtedly, the solutions outlined in the previous section need to be supplemented by the current regulations concerning the stages and course of the interview. Thus, Article 190 § 1 of the Code of Criminal Procedure obliges to warn the witness of criminal liability for a false testimony or concealment of the truth (in preparatory proceedings, the witness additionally signs a statement of having been notified). On the other hand, Article 300 § 3 of the Code of Criminal Procedure provides that prior to the first interview a witness shall be instructed about his rights and obligations specified in Articles 177–192a of the Code of Criminal Procedure and available protection and assistance measures[32]. There is no doubt that the last of these rights, introduced into the legal order by the Act of 28 November 2014 on protection and assistance for victims and witnesses[33] constitute the implementation of long-standing demands to guarantee greater protection to witnesses (and victims) in connection with their participation in criminal proceedings. Article 3 of this Act provides for protection for the duration of the trial, personal protection, as well as assistance in changing the place of residence (and related financial assistance to satisfy basic life needs or to obtain health care services). These measures may be applied not only in connection with the pending criminal proceedings, but also in connection with the completed ones, as well as, which requires special emphasis, also prior to instituting criminal proceedings if a threat to life or health appears in the course of operational intelligence activities or ongoing initial verifying proceedings (Article 307 of the Code of Criminal Procedure).

Among new solutions, crucial from the perspective of the interviewing bodies, there is also an important Art. 191 § 1 of the Code of Criminal Procedure

[30] It seems that such benefits should also be mentioned in the case of a solution adopted in Article 377, par. 4 of the Code of Criminal Procedure where it is possible to interview the accused using means referred to in Article 177, par. 1a of the Code of Criminal Procedure, if the accused has not yet provided explanation before the court, and Article 396, par. 2 of the Code of Criminal Procedure is applicable. *Cf.:* Article 390, par. 3 of the Code of Criminal Procedure.

[31] Act of 25 June 1997 on Key Witness (i.e. Journal of Laws of 2016, item 1197).

[32] *Notabene*, in addition to oral statements, the witness shall receive in paper a list of rights and obligations of the witness in the proceedings. The form of such an instruction was prepared by the Minister of Justice, pursuant to the statutory delegation of Article 300 § 4 of the Code of Criminal Procedure.

[33] Act of 28 November 2014 on the protection and assistance to victims and witnesses. *Journal of Laws*, 2015, item 21.

according to which an interview of a witness begins with asking him for his name, surname, age, occupation, criminal record for a false statement or an offence and his attitude towards the parties. Thus, the legislator omits the question about the place of residence, which is determined by the interviewing authority on the basis of an identity document or a witness's written statement (Art. 191 § 1a of the Code of Criminal Procedure). It is underlined that questions asked to a witness cannot be aimed at revealing their place of residence, and also — which requires emphasizing — their place of work, unless it is important for the resolution of the case (Art. 191 § 1b of the Code of Criminal Procedure). As a result, interview report does not include either data on the place of residence or the place of work of the witness (including the notifier and the injured party; see Art. 148a, par. 1 of the Code of Criminal Procedure). Pursuant to Art. 148a § 1 of the Code of Criminal Procedure — they are to be entered in annexes to protocols, stored in an address annex to the case file, and for the sole knowledge of the authority conducting the proceedings[34]. The exception is the place of work of a public officer who gives testimony in connection with his function, unless, for the sake of criminal proceedings, it should not be entered in the minutes (partial anonymisation, see Article 148a § 2 of the Code of Criminal Procedure). In addition, Article 148a (2) of the Code of Criminal Procedure provides for cases justifying the renouncement of anonymisation, allowing for the total or partial renunciation of the provisions of Article 148 (1) and (3) of the Code of Criminal Procedure. The circumstances which formed the basis for such a decision were reduced to three cases, namely:

1) if data in question are known to the accused,
2) if place of residence or workplace of the victim or witness is also the place of business of the victim or witness and these data have been made available to the public in the appropriate register or records,
3) if, due to the nature of the case, there is a clear lack of need to protect the data in question.

While presenting the issue more precisely, it is worth noting that the above mentioned institutions do not exhaust the catalogue of witness protection measures in criminal proceedings, although they are undoubtedly an expression of civilisational transformations. Among the instruments aimed at taking into account the legally protected interests of witnesses, the following should be mentioned first of all:

1) full secrecy of information enabling to establish the identity of a witness pursuant to Article 184 of the Code of Criminal Procedure (the so-called anonymous witness, otherwise an incognito witness, a covert witness);

[34] The procedure for dealing with other documents containing such data is specified in Article 148a (3) of the Code of Criminal Procedure. The Act also includes a possibility of providing access to data or original documents from the address annex. However, this solution does not constitute another case of renouncement of anonymisation, on the contrary, it emphasises its absolute nature, indicating in the amended Article 156a of the Code of Criminal Procedure that access to data covered by protection clause is granted only upon request of state bodies or local government bodies, if it is necessary for the performance of these bodies statutory tasks. In addition, the provision in the second sentence entitles to provide access to protected data also to other institutions or persons, at their request, if it is a matter of great importance.

2) an interview of a juvenile victim held by the court only; pursuant to the rules set forth in Article 185a of the Code of Criminal Procedure,
3) the possibility of questioning a juvenile witness pursuant to Article 185a of the Code of Criminal Procedure (Article 185b of the Code of Criminal Procedure),
4) an interview held only by the court of a victim of crimes described in Articles 197–199 of the Code of Criminal Procedure (Article 185c of the Code of Criminal Procedure);
5) interviewing a witness who has not reached the age of 15, if possible in the presence of a statutory representative or an actual guardian, unless the welfare of the proceedings precludes it (pursuant to Article 171, par. 3 of the Code of Criminal Procedure);
6) questioning of a witness in the absence of the accused (Article 390, par. 2 of the Code of Criminal Procedure);
7) questioning of a witness outside the courtroom if they did not appear due to obstacles that are too difficult to remove (Article 396, par. 2 of the Code of Criminal Procedure),
8) hearing the testimony of a witness questioned in pre-trial proceedings if the witness refuses to testify without justification, testifies differently than previously, or declares that they do not remember certain circumstances, and also did not appear due to obstacles that cannot be removed (regulations known to the Code of Criminal Procedure of 1928) or — which is already a novelty — they stay abroad or could not be served with a summons (although it seems that this circumstance may constitute an example of an obstacle difficult to remove) or the chairman abandoned the summons pursuant to Article 333 § 2 of the Code of Criminal Procedure (at the prosecutor's request, a witness is staying abroad or is to state circumstances which the accused does not deny), as well as when they died (Article 391, par. 1 of the Code of Criminal Procedure);
9) exclusion of the publicity of the whole or part of the trial if even one of the defendants is a minor or for the time of hearing a witness who is under 15 years of age (Article 360, par. 1, item 2 of the Code of Criminal Procedure).

While discussing the issues of the dissertation, it is impossible not to address the issue of an oath so widely discussed on the example of the solutions adopted in the Code of Criminal Procedure of 1928: 'Aware of the meaning of my words and responsibility before the law, I solemnly promise that I will tell the sincere truth not hiding anything that is known to me'. This oath, pursuant to Article 187, par. 1 of the Code of Criminal Procedure may be taken only by the court or a judge appointed before the beginning of the hearing. Obviously, the Act also provides for the possibility of withdrawing from making an oath or not taking it at all. However, provided that the withdrawal is regulated in the form already known from 1928 of the Code of Criminal Procedure (the present parties do not object to this), certain modifications come into play when the court does not take the promise. According to Article 189 of the Code of Criminal Procedure, such a situation arises when:

a person is under 17 years of age (in 1928 — 14);

1) there is a reasonable belief that a witness due to mental disorders is not properly aware of the importance of the oath;

2) a witness is a person suspected of committing an offence which is the subject of proceedings or is closely linked to the act being the subject of proceedings, or if he or she has been convicted of this offence (extended scope in relation to the solutions adopted in the Code of Criminal Procedure of 1928);
3) a witness was eventually convicted of a false statement or accusation (additional condition but not provided for in the Code of Criminal Procedure of 1928).

When implementing the above solutions into the questioning scheme, the following order of the interview should be indicated: notification of liability, request for personal data, making an oath, and then allowing free speech within the limits specified for the purpose of a given activity, and then moving on to asking questions (Article 171 § 1 of the Code of Criminal Procedure). As it can be seen, the shape of the questioning procedure itself has not been modified and its general assumptions have not been changed in any way. Modernisation measures taken by the legislator were aimed at clarifying and specifying the methodology of an interview, which was expressed, inter alia, in the provisions of Article 171 of the Code of Criminal Procedure, specifying the scope and type of admissible questions (supplementary, explanatory, control, important and non-suggestive), as well as introducing a ban on influencing the statements of the person interviewed by unlawful threat, as well as the use of hypnosis and other chemical or technical means affecting the psychological processes of the person interviewed or aimed at controlling unconscious reactions of their body.

For the sake of accuracy of the deliberations, reference should be made to documenting an interview, also due to the fact that this issue was raised very meticulously on the first pages of these paper. The current procedural regulations in Article 143 (2) of the Code of Criminal Procedure unequivocally impose an obligation to draw up a witness interview report, at the same time indicating, pursuant to Article 174 of the Code of Criminal Procedure, that evidence from the witness's testimony cannot be replaced by the content of official letters or notes. It is worth noting, however, that under current regulations, the interview report is written down by an employee of the secretariat or another person authorised by the president of the court. On the other hand, at the stage of preparatory proceedings, the witness interview report is drawn up by the interviewer himself or by a person chosen by him. At the same time, the legislator requires the following oath: 'I solemnly promise that I will conscientiously perform the duties of a clerk entrusted to me', only if the chosen person is not an employee of the body conducting the proceedings. Significantly, if a procedural act is recorded by means of a transcript, the protocol may be limited to a record of the most important statements of the persons taking part in it. The provisions on exclusion for the same reasons as the judge apply to both the clerk and the shorthand typist (Articles 40–44 of the Code of Criminal Procedure). Distancing from a thorough comparative analysis of cases of a clerk exclusion in the Code of Criminal Procedure of 1928 and 1997, it should be pointed out that the catalogue remained unchanged in its general assumptions. At the same time, the progressing secularization, similarly as in the case of the oath, also imprinted its mark on the scope of exclusions, formally excluding from the group of clerks (and shorthand typists) persons remaining in a relationship with the

other party, a victim, a defence counsel, an attorney or a statutory representative. The implementation in 1997 of mediation, a new institution being a manifestation of restorative justice, also resulted in the extension of the list of persons being the subject to exclusion as the mediator. At the moment, the court eventually decides on the exclusion during a hearing, and at the pre-trial stage — the person conducting an interview.

Returning to the issue of documenting, the legislator specified required elements of a protocol in Article 148 (1) of the Code of Criminal Procedure, additionally introducing the requirement to include testimonies and everything that concerns the rights or interests of a witness with possible accuracy (Article 148 (2) of the Code of Criminal Procedure), while prohibiting the replacement of the content of testimonies by referring to other protocols (Article 148 (3) of the Code of Criminal Procedure). In the light of Article 147 of the Code of Criminal Procedure the course of an interview may also be recorded by means of a video or sound recording device of which the witness must be informed before the device is put into operation. In principle, this solution is optional, but in § 2 and 2a of the provision in question, the legislator indicated cases of obligatory recording (both image and sound!), namely when:

1) there is a risk that this person may not be interviewed in the further proceedings,
2) the interview takes place pursuant to Article 396 of the Code of Criminal Procedure, or pursuant to Articles 185a–185c of the Code of Criminal Procedure.

The image and/or sound recording becomes an annex to the protocol.

There is no doubt that the indicated solutions are a consequence of the progress in science and technology, which are guided by such values as effectiveness, speed and efficiency. At the same time, transformations within a constantly evolving legal system, apart from the implementation of a number of new regulations that expand procedural instruments, also affect the sphere of evidence bans, significantly extending them. It is worth mentioning that the Criminal Procedure Code of 1997 additionally provides for a ban on questioning as a witness:

1) a mediator as to the facts of which he learnt from the accused or the injured party while conducting mediation, excluding information about the offences listed in Article 240 of the Penal Code. (Article 178a of the Code of Criminal Procedure);
2) persons who are obliged to maintain secrecy with respect to the protection of mental health as to the circumstances of admitting by the perpetrator to the alleged act (Article 52 (1) of the Act on the protection of mental health[35]).

Other absolute prohibitions on the use of sources of evidence other than witnesses (see: Article 196, par. 1 and 2, article 199, article 389 of the Code of Criminal Procedure) and prohibitions on the use of inadmissible methods of interview (Article 171, paragraph 5, items 1 and 2 and article 174 of the Code of Criminal Procedure, and Article 6 of the Act on Key Witness, discussed earlier) should be mentioned. On the other hand, stressing the current wording of the prohibitions on evidence,

[35] The Act of 19 August 1994 on mental health protection. *Journal of Laws*, 2018, item 1878.

apart from the obstacles already known on the grounds of the 1928 Code of Criminal Procedure and resulting from the obligation to keep classified information in secret, as well as those related to exercising a profession or function (currently, this issue is regulated by Articles 179–180 of the Code of Criminal Procedure in order to protect the rights of participants in proceedings), the content of Article 185 of the Code of Criminal Procedure should be recalled, which states that 'a person in a particularly close personal relationship with the accused may be exempted from giving testimony or answering questions, if such a person applies for it'. Comparing it to the provisions of the Code of Criminal Procedure of 1928, this regulation significantly broadens the circle of persons exempt from giving testimony (or answers to questions). The same applies in the case of Article 182 of the Code of Criminal Procedure, which refers to the closest person entitled to refuse to give evidence, the person within the meaning of Article 15, par. 11 of the Code of Criminal Procedure also includes a person remaining in common life (cohabitation). Finally, Article 581 § 1 and 582 § 1 of the Code of Criminal Procedure provide for a ban on questioning persons who enjoy diplomatic and consular immunity if they do not consent to such questioning.

This superficial analysis, limited by the framework of the publication, still needs to be complemented by a reference to current instruments for disciplining witnesses in the event of their insubordination. At present, these are:

1) fine of up to PLN 3,000 — for unjustified failure to appear on summons, expulsion from the place of conducted proceedings, evasion from giving testimony (Art. 285 § 1 and 2 of the Code of Criminal Procedure);
2) detention and forced delivery — for unjustified failure to appear on summons, expulsion from the place of conducted proceedings (Article 285 § 2 of the Code of Criminal Procedure);
3) arrest for a period not more than 30 days — regardless of a fine in the event of persistent evasion of giving testimony (Article 287 § 2 of the Code of Criminal Procedure);
4) burdening the witness with an obligation to pay additional costs of proceedings — failure to comply with Article 285 (1) or Article 287 (1) of the Code of Criminal Procedure and, as a result, incurring additional costs (Article 289 (1) of the Code of Criminal Procedure).

The indicated catalogue of procedural penalties, juxtaposing it with the aforementioned provisions of Articles 117–120 of the Code of Criminal Procedure of 1928, entitles to a final statement, which in fact emerges from the conclusions already made earlier, that the act of an interview, although subject to changes, cannot be considered fundamental. The interviewing procedure, relatively stable (which indicates an extremely high level of legislative technique of the Code of Criminal Procedure of 1928), does not imply any significant doubts as to its interpretation. Rules governing the issue in question do so in a generally consistent and transparent manner. There is no doubt, however, that in solutions of the current Code of Criminal Procedure, there is continuation of the legal thought from 1928. The constitutive core of the interviewing model consists of a coherent system of norms, formed almost 100 years ago, with each subsequent amendment strengthened and extended by solutions guided by the idea of humanisation of the criminal justice system and the subjectivity of participants in proceedings.

References

1. Bardach J, Leśnodorski B, Pietrzak M, Historia ustroju i prawa polskiego. Warsaw, 1998.
2. Dutkiewicz M, Przesłuchanie świadka na odległość w świetle art. 177 § 1a kodeksu postępowania karnego. *Palestra*, 2008, No. 3–4.
3. Grzegorczyk T, Komentarz do art. 177 Kodeksu postępowania karnego, [in:] Kodeks postępowania karnego. Komentarz. Krakow, 2004.
4. Hofmański P, Sadzik E, Zgryzek K, Kodeks postępowania karnego. Komentarz, t. I. Warsaw, 2004.
5. Kryczyński O, Dochodzenie według K.P.K. w teorii i praktyce. *Głos Sądownictwa,* 1930, No. 4.
6. Mogilnicki A, K.p.k. wymaga zmian. *Gazeta Sądowa Warszawska,* 1936, No. 8.
7. Rozporządzenie Prezydenta Rzeczypospolitej z dnia 19 marca 1928 r. Kodeks postępowania karnego. OJ, No. 33, item 313.
8. Rozporządzenie Prezydenta Rzeczypospolitej z dnia 19 marca 1928 r. Przepisy wprowadzające kodeks postępowania karnego. OJ, 1928, No. 33, item 314.
9. Siewierski M, Uwagi krytyczne nad śledztwem i dochodzeniem według k.p.k. *Archiwum Kryminologiczne*, 1993, Vol. 1, Issue 1.
10. Stefański R.A, Aktualny model postępowania przygotowawczego w polskim procesie karnym. *Ius Novum,* 2007, No. 2–3.
11. Świecki D (Ed.), Kodeks postępowania karnego. Komentarz. Warsaw, 2013.
12. Ustawa z 31 sierpnia 2011 r. o zmianie ustawy o bezpieczeństwie imprez masowych oraz niektórych innych ustaw. OJ, No. 217, item 1280.
13. Ustawa z dnia 10 stycznia 2003 r. o zmianie ustawy — Kodeks postępowania karnego. OJ, 2003, No. 17, item 155.
14. Ustawa z dnia 11 marca 2016 r. o zmianie ustawy — Kodeks postępowania karnego oraz niektórych innych ustaw. OJ, 2016, item 437.
15. Ustawa z dnia 13 czerwca 2013 r. o zmianie ustawy — Kodeks karny i ustawy — Kodeks postępowania karnego. OJ, 2013, item 849.
16. Ustawa z dnia 19 kwietnia 1969 r. Kodeks postępowania karnego. OJ, 1969, No. 13, item 95 and 96.
17. Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego. OJ, 2018, item 1878.
18. Ustawa z dnia 20 lutego 2015 r. o zmianie ustawy — Kodeks karny oraz niektórych innych ustaw. OJ, item 396.
19. Ustawa z dnia 25 czerwca 1997 r. o świadku koronnym. OJ, 2016, item 1197.
20. Ustawa z dnia 27 września 2013 r. o zmianie ustawy — Kodeks postępowania karnego oraz niektórych innych ustaw. OJ, 2013, item 1247).
21. Ustawa z dnia 28 listopada 2014 r. o ochronie i pomocy dla pokrzywdzonego i świadka. OJ, 2015, item 21.
22. Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego. OJ, 1997, No. 89, item 555.
23. Wiliński P, Przesłuchanie świadka na odległość w postępowaniu karnym. *Przegląd sądowy*, 2005, No. 6.
24. Wyrok SA w Katowicach z dnia 1 stycznia 2008 r., II AKa 382/08. *Biuletyn SA w Katowicach,* 2008, No. 2.

25. Wyrok SA w Katowicach z dnia 6 maja 2009 r., IIAka 394/08, KZS 2009, No. 9.
26. Wyrok SA w Krakowie z dnia 5 października 2010 r., II AKa 10/10, KZS 2011, No. 4.
27. Wyrok SN z dnia 27 marca 1930 r., II 3 K 80/30. Zbiór Orzeczeń 155/1930.

About the Author

***Agnieszka Choromańska**, lieutenant-colonel of the police, PhD in the field of criminal law, head of the Forensic Science Section of the Criminal Service Institute at the Internal Security Faculty of the Police Academy in Szczytno. Author of book studies and articles on criminal procedure and proceedings in juvenile cases; scientific interests: forensic tactics, evidentiary proceedings, guarantees of participants in the criminal process, consensual institutions as well as economization and computerization of the criminal process.* Correspondence: *Wyższa Szkoła Policji w Szczytnie, ul. Marszałka Józefa Piłsudskiego 111, 12–100 Szczytno. E-mail: a.choromanska@wspol.edu.pl*

***Streszczenie.** Przedmiotem publikacji są rozwiązania prawne dotyczące modelu przesłuchania świadka. Podjęte rozważania mają charakter studium porównawczego, odnoszą się bowiem zarówno do regulacji zawartych w Kodeksie postępowania karnego z 1928, jak i przepisów obecnej procedury karnej. Za cel przyjmują próbę syntetycznej analizy kluczowych zmian modelu przesłuchania świadka w korelacji z czynnikami historycznymi, a także ich oddziaływaniem na treść aktualnego brzmienia przepisów regulacji karnoprocesowej. Autorka, dokonując przeglądu rozwiązań prawnych, w sposób szczególny pochyla się nad instytucją przesłuchania na odległość przy użyciu urządzeń technicznych umożliwiających jednoczesny przekaz obrazu i dźwięku. Zagadnienie to omawia w wielu aspektach, z uwzględnieniem poglądów doktryny i analizy orzecznictwa. Prócz oceny obecnego stanu prawnego in genere, w pracy prezentuje także propozycje postulowanych rozwiązań w analizowanym zakresie.*

***Streszczenie.** В данной статье рассматриваются правовые решения, касающиеся модели допроса свидетеля. Рассматриваемые рассуждения имеют характер сравнительного исследования и касаются как положений в Уголовно-процессуальном кодексе 1928 года, так и положений действующей уголовной процедуры. Целью данной работы является попытка провести комплексный анализ ключевых изменений в модели допроса свидетеля в увязке с историческими факторами, а также их влияния на настоящую редакцию уголовно-процессуального регулирования. Автор, рассматривая правовые решения, особенно уделяет внимание институту дистанционного допроса с использованием технических устройств, позволяющих на одновременную передачу изображения и звука. Этот вопрос обсуждается во многих аспектах, учитывая систему взглядов доктрины и анализ судебной деятельности. Кроме оценки текущей правовой ситуации в целом, в статье также представлены предложения для постулируемых решений в анализируемой области.*

(mug)