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## Procedural conditions for admitting evidence from the testimony of a crown witness in Polish criminal procedure

### Warunki procesowe dopuszczenia dowodu z zeznań świadka koronnego w polskiej procedurze karnej

#### Abstract

The procedural criminalistic institution of a crown witness is one of the most effective mechanisms for combating organized crime at the disposal of the justice system. The aim of this article is to analyse Article 3 of the Crown Witness Act, which presents a collection of obligatory and facultative conditions that a suspect must fulfil in the process of applying for the status of a crown witness. This provision can be seen as a complement to the definition in Article 2 of the aforementioned Act. In the text, the author discusses the issue of the content of statements made by the accused, who is seeking to obtain the status of a crown witness, as well as the mechanism that obliges them to provide testimony in court. Additionally, the facultative condition of the suspect's commitment to returning any financial benefits derived from the crime or fiscal offense and compensating for damages incurred as a result of its commission is explored. The considerations are based on available literature and current legislation. The author also refers to court rulings concerning the discussed provisions and the line of jurisprudence related to the assessment of testimony provided by a crown witness.

**Keywords:** Crown witness, evidence from the testimony of a crown witness, criteria for admitting evidence from the testimony of a crown witness, examination of the crown witness

#### Streszczenie

Procesowo kryminalistyczna instytucja świadka koronnego jest jednym z najskuteczniejszych mechanizmów przeciwdziałania przestępczości zorganizowanej jakimi dysponuje wymiar sprawiedliwości. Celem niniejszego artykułu jest analiza art. 3 ustawy o świadku koronnym, który stanowi zbiór warunków natury obligatoryjnej i fakultatywnej, które są obowiązkami podejrzanego w procesie ubiegania się o status świadka koronnego. Wskazany przepis stanowi niejako

dopełnienie definicji z art. 2 wskazanej ustawy. Autor omawia w tekście odpowiednio zagadnienie treści wyjaśnień oskarżonego, który ubiega się o nadanie statusu świadka koronnego i mechanizm jego zobowiązania do złożenia zeznań przed sądem, a także fakultatywny warunek zobowiązania się podejrzanego do zwrotu korzyści majątkowej odniesionej z przestępstwa lub przestępstwa skarbowego oraz naprawienia szkody powstałej w wyniku jego popełnienia. Rozważania oparte są o dostępną literaturę przedmiotu i aktualne ustawodawstwo. Autor wskazuje ponadto na orzeczenia sądów dotyczące komentowanych przepisów i linię orzeczniczą, która odnosi się do oceny zeznań świadka koronnego.

**Słowa kluczowe:** Świadek koronny, dowód z zeznań świadka koronnego, przesłanki dopuszczenia dowodu z zeznań świadka koronnego, przesłuchanie świadka koronnego

## 1. Introduction

The year 1989 marked the beginning of a period of political transformation in Poland. The ongoing societal changes, including mental shifts, and the previously unfamiliar free flow of capital, were among the reasons for the rise in criminal activity. Over time, petty crime started taking on organized forms, and the opening of borders often led to the evolution of criminal groups into international *consortia of organized crime*. The paralysis of law enforcement authorities, which were helpless in combating this new and gradually uncontrollable phenomenon using conventional operational methods, initiated a discussion on effectively combating this form of crime. Since 1991, cyclical meetings of experts on organized crime have been held. This eventually led to the establishment of the Bureau for Combating Organized Crime within the Main Police Headquarters in 1994. The debate over new and controversial methods of evidence gathering, primarily the admission of evidence from the testimony of a crown witness, intensified. However, extreme expert opinions shared the same goal – effectively combating organized crime. The culmination of efforts by legal scholars, law enforcement authorities, and parliamentarians was the introduction of the crown witness institution into criminal procedure in 1997. This instrument was already functioning efficiently in numerous European countries.

According to the Polish Language Dictionary - a crown witness - is the main and most important witness<sup>1</sup>. This is a very general and imprecise yet accurate assertion. The crown witness is the "most important witness in criminal proceedings where they appear, as they provide information that leads to the punishment of perpetrators of crimes"<sup>2</sup>. Of course, this refers to an extrajudicial, semantic

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<sup>1</sup> *Słownik języka polskiego*, ed. M. Szymczak, t. I, Warszawa 1983, p. 1016.

<sup>2</sup> K. Bajda, *Prawno-kryminalistyczna problematyka chuliżaństwa stadionowego*, Rzeszów 2020, p. 172.

understanding of a person fulfilling the indicated role. Within the framework of Polish criminal procedure, which is based on the principle of free evaluation of evidence, there are no inherently valid, most important, or less important pieces of evidence<sup>3</sup>.

## **2. Appropriate content of the defendant's explanations and commitment to testify before the court**

To obtain the status of a crown witness, a suspect must meet specific procedural conditions outlined in the law. Article 3 of the Crown Witness Act outlines these conditions. This provision includes two mandatory conditions and one optional condition. Below, the content of the first paragraph of the aforementioned Act will be presented and analysed.

The first condition, contained in subsection "a" of Article 3, is the obligation to "provide the investigating authority with information that may contribute to the disclosure of the circumstances of the crime, the detection of other perpetrators, the revelation of further crimes, or their prevention"<sup>4</sup>. It is essential that this information is provided before the filing of the indictment with the court. This is the final deadline by which a potential crown witness can cooperate with the prosecuting authorities. This deadline has been designed to verify the credibility of the information provided by the potential witness before the indictment is sent to the court. It should be emphasized that the mere formulation of the indictment by the prosecutor does not hinder the submission of an application for the admission of evidence from the testimony of a crown witness. If such a situation were to occur and the court were to share the prosecutor's opinion regarding the admission of such evidence, then the prosecutor is obliged to draft a new indictment. Materials concerning the crown witness will be excluded from the new indictment and, after copies are made, will be placed in a separate procedure, which will then be suspended. The term specified in the first paragraph, "until the filing of the indictment," should be understood as the moment of submitting the indictment to the court<sup>5</sup>. Another reason for delineating this term is the intention for the potential crown witness to provide information before the clarification of the circumstances of the committed crimes during the main trial. This limits the formulation of an accusation rewarding remorseful criminals for insufficiently certain knowledge in the context of the possibility of leaking information about the case<sup>6</sup>.

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<sup>3</sup> See: Warsaw Court of Appeal Judgment of April 29<sup>th</sup>, 2005, case reference II AKa 90/05.

<sup>4</sup> Journal of Laws 2016.1197 consolidated text.

<sup>5</sup> B. Kurzępa, *Świadek koronny. Geneza instytucji. Komentarz do ustawy*, Toruń 2005, p. 112.

<sup>6</sup> E. Kowalewska-Borys, *Świadek koronny w ujęciu dogmatycznym*, Kraków 2004, pp. 196–197.

The law does not limit the number of crown witnesses in a single criminal proceeding. Therefore, theoretically, there can be two or more candidates for crown witnesses. Such a case is undoubtedly possible, considering the benefits that come with obtaining the status of a crown witness. It should be stated that law enforcement authorities, when considering granting the status to suspects, should be guided by criteria of the usefulness of the information provided and the timing of its submission. It appears that a suspect who was the first to provide relevant information to law enforcement authorities should make use of the advantages gained from this status. Indeed, it is in the suspect's interest to provide the possessed information as quickly as possible. Another criterion should be the content of the information. Only the most comprehensive and truthful information can guarantee the status of a crown witness. However, a situation should not occur where a court allows two crown witnesses who provided the same information to participate in the trial. This highly controversial institution is granted legitimacy to operate solely in extraordinarily complex and evidentially difficult situations and only as the *ultima ratio*<sup>7</sup>. It is intended to be treated as a final measure and must not be abused<sup>8</sup>.

Article 3, paragraph 1 of the Crown Witness Act begins with the phrase "evidence may be admitted(...)"<sup>9</sup>. This means that both the prosecutor's decision regarding the submission of the application and the court's decision are optional. This also implies that the prosecuting authorities are not obligated to make decisions based on the suspect's and their defense attorney's requests. Their decision is entirely independent and should be determined solely by the usefulness of the provided information, procedural conditions, and substantive legal considerations<sup>10</sup>.

The transmission of information to law enforcement authorities is carried out in the form of explanations given by the suspect. The form of revealing the knowledge of a potential crown witness is through a written interrogation protocol. All non-procedural forms of interrogation, such as informal conversations or letters, do not constitute the transmission of information as defined in Article 3, paragraph 1, point 1 of the Crown Witness Act<sup>11</sup>.

Turning to considerations about what the suspect should disclose to law enforcement authorities, we must begin by analysing the concept of "information"

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<sup>7</sup> *Ibidem*, p. 197.

<sup>8</sup> P. Bortkiewicz, *Ocena etyczna nadzwyczajnych instrumentów władzy państwowej w zwalczaniu przestępczości zorganizowanej ze szczególnym uwzględnieniem instytucji świadka koronnego* [in:] *Przestępczość zorganizowana. Świadek koronny. Terroryzm. W ujęciu praktycznym*, red. E.W. Pływaczewski, Kraków 2005, p. 166.

<sup>9</sup> Journal of Laws 2016.1197 consolidated text.

<sup>10</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 112–113.

<sup>11</sup> E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 197.

in the context of the Crown Witness Act. Under this term, there are four types of information. These types of information can contribute to the disclosure of the circumstances of the crime, the detection of other perpetrators, the revelation of further crimes, or their prevention. This expression mandates the conveyance of knowledge about facts that are known to the offender, and this knowledge must not be partially known to law enforcement authorities.

The first assumption is the disclosure of information about the circumstances of the crime. The Court of Appeal in Warsaw, in its judgment of December 13<sup>th</sup>, 1999, stated that "the obligation to disclose essential circumstances of the crime refers to the known circumstances of the perpetrator's commission of the act, which are significant for the case's resolution. These circumstances include not only those that are part of the statutory elements of the crime but also those that, for example, indicate the mode of operation or the type and extent of the damage caused (...). The obligation to disclose essential circumstances of committing a crime must be fulfilled by the perpetrator in a complete manner, which means that they should disclose all known circumstances concerning both themselves and other co-perpetrators"<sup>12</sup>. The aim of this assumption is to reveal all possible facts related to the crime. It particularly concerns the circumstances of the time of committing the act, its place, and the manner in which the actions were carried out. The provided facts must assist law enforcement authorities in determining the course of the alleged crime attributed to the suspect. This refers to information that is important from the point of view of the evidentiary process. These do not have to be pieces of information that precisely describe all the circumstances of the event. Such a requirement would be impossible to fulfil, as observations of criminal groups and associations show that their members do not know all the details of the criminal undertaking. The suspect only needs to disclose everything they know<sup>13</sup>.

The second aim is to disclose the remaining perpetrators of the crime. A potential crown witness must reveal information about at least one of the other perpetrators. Revealing all participants in a criminal group or association is unlikely, which is also due to the nature of these organizations. Individuals from whom crown witnesses originate do not know all the criminals operating within these groups. It should be stated that the condition is not fulfilled by a suspect who possesses information about several individuals but discloses only a portion of them. By disclosing individuals, it should be understood not only as revealing their personal data but also providing information that indicates their involvement in

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<sup>12</sup> Warsaw Court of Appeal Judgment of December 13<sup>th</sup>, 1999, case reference II AKa 326/99.

<sup>13</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 114.

the crime. Pursuant to the second assumption, efforts should be made to uncover not only the remaining accomplices but all individuals connected to the committed crime. This particularly concerns the organizers of criminal activities who are at the top of the criminal hierarchy. The information provided by a potential crown witness is crucial because, in most cases, accomplices are unknown, and there is a lack of sufficient evidence to suspect a specific individual or individuals<sup>14</sup>. The information provided by the suspect that could contribute to the disclosure of the remaining perpetrators undergoes verification. If the facts mentioned find confirmation in other evidence, the prosecutor submits a request to the court for the admission of evidence from the testimony of a crown witness<sup>15</sup>. The credibility of the crown witness's testimony was also addressed by the Supreme Court in its resolution of April 4<sup>th</sup>, 2013: "The fact that the testimony of a crown witness constitutes the sole incriminating evidence does not disqualify it as a source of evidence or its testimony as a means of evidence, which testimony is subject to evaluation like any other evidence and is assessed on general principles"<sup>16</sup>. It should be emphasized that only the truthfulness of the witness guarantees the maintenance of their status as a crown witness<sup>17</sup>, which makes a pragmatic witness strive to reconstruct events in accordance with their actual course.

The third of the conditions mentioned in Article 3, paragraph 1, point 1 of the Crown Witness Act is the disclosure of information regarding further crimes. This applies to criminal acts at any stage. The information disclosed by a potential crown witness is detached from the crime they are charged with. In the discussed case, the perpetrator has an obligation to provide information about committing acts that were not the subject of the ongoing pre-trial proceedings against them. The crimes in question include not only offenses under Article 1 of the Crown Witness Act but also offenses defined in non-codified provisions. It is important to note that these crimes do not need to be committed within an organized criminal group or association. The conveyed information does not have to indicate perpetrators or constitute evidence. They only need to "contribute" to the disclosure of further crimes. The grammatical interpretation of this provision points to two or more crimes disclosed by the defendant. However, it should be recognized that in the case of disclosing a serious crime, this condition will be fulfilled, and there are no obstacles to applying for the status of a crown witness. All provided information must be verified under Article 307 of the Code of Criminal Procedure, except for those whose commission raises no doubts<sup>18</sup>.

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<sup>14</sup> E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 200.

<sup>15</sup> B. Kurzępa, *Świadek koronny w polskim...*, *op.cit.*, p. 35.

<sup>16</sup> Supreme Court Judgement of April 4<sup>th</sup>, 2013, case reference II KK 67/13.

<sup>17</sup> Warsaw Court of Appeal Judgment of February 4<sup>th</sup>, 2015, case reference II AKa 405/14.

<sup>18</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, pp. 115–116.

The fourth condition, as mentioned, is the transmission of information that could prevent further crimes. In this case, there is a problem with verifying the facts disclosed by the offender. The basis for granting the status of a crown witness certainly cannot be solely information about crimes that, according to the potential crown witness, will occur in the distant future. This is because verifying such information is impossible, and it cannot be determined whether such explanations are useful for law enforcement authorities. The condition of providing information that can prevent further crimes will undoubtedly be met by conveying information about the planned date of the crime, hidden tools, or means of transportation. It should be noted that verifying what the accused is saying is possible when preparations for a new crime are significantly advanced. In the case of this condition, law enforcement authorities must approach the suspect's explanations with great caution, as the conveyed information may be untrue, and the purpose of conveying it may be solely to obtain the status of a crown witness<sup>19</sup>.

The legislator expanded<sup>20</sup> Article 3 of the Crown Witness Act with two additional conditions that a suspect must fulfil to apply for the status of a crown witness. Subpoint "b" in the first paragraph states: "disclosed their own property and the known property of the other perpetrators of the crime or fiscal offense referred to in Article 1"<sup>21</sup>. This change should be approved as it will contribute to a comprehensive analysis of the financial situation of all perpetrators of the crimes mentioned in Article 1. It will allow for more effective prosecution. Imposing the obligation to provide the specified information by a potential crown witness will also assist in verifying their explanation in terms of truthfulness. The obtained financial benefits from the committed crimes may have a proportional reflection in the size of the property of the perpetrator and the other criminals, which undoubtedly facilitates the justice system's decisions regarding granting the status of a crown witness to a repentant criminal. Therefore, the suspect is obliged to disclose their property. If they also possess information about the property of the other perpetrators, they must also share it with law enforcement authorities. Concealing, even partially, known facts mentioned in subpoint "b" results in the loss of the opportunity to obtain the status of a crown witness.

A sufficient condition for recognizing that the conditions mentioned in Article 3, paragraph 1, point 1 of the Crown Witness Act have been fulfilled will be providing the prosecuting authority with information that fulfils at least one condition

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<sup>19</sup> *Ibidem*, p. 116–117.

<sup>20</sup> Article 3, paragraph 1, amended by Article 1, point 2 of the Act of July 22<sup>nd</sup>, 2006 (Journal of Laws 2006.149.1078), amending the aforementioned Act with effect from August 31<sup>st</sup>, 2006.

<sup>21</sup> Journal of Laws 2016.1197 consolidated text.

from the conditions specified in subpoint "a" and at least one from those specified in subpoint "b". However, this only fulfils one of the mandatory obligations of a perpetrator seeking the status of a crown witness. The second one is the commitment of the suspect to provide comprehensive testimony before the court<sup>22</sup>.

In summary, the first point of the first paragraph of Article 3 of the Act should be understood as stating that the conveyed information (its scope) is intended to enable law enforcement authorities to achieve the goals set forth in the analysed article. This is therefore a functional criterion. Furthermore, the law does not require the conveyed information to be voluntary, and it does not take into account the motive for cooperating with law enforcement authorities<sup>23</sup>.

Another obligatory condition that a suspect must meet when applying for the status of a crown witness is the commitment to provide exhaustive testimony before the court (Article 3, paragraph 1, point 2). Their testimony must, of course, be truthful, as indicated in Article 10, paragraph 1, point 1 of the Act. The witness's testimony must be detailed and cannot be limited solely to the circumstances of their own crime. The evidentiary value of crown witness testimony was widely debated in legal doctrine. According to Polish criminal procedural law, a crown witness provides evidentiary statements, which *de facto* are explanations of a special kind; essentially, they are accusations<sup>24</sup>. There have also been voices in accordance with which the testimonies of a crown witness should be considered unreliable *a priori*<sup>25</sup>. The Supreme Court was also sceptical about what a co-perpetrator says, stating in a judgment: "The evaluation of the credibility of an accusation requires special caution from the court, as an accusation is not full-value evidence, unless it is clear and consistent, and furthermore confirmed by other direct or indirect evidence, with the personality of the accuser also not being irrelevant. The truth of an accusation can also be questioned due

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<sup>22</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 117.

<sup>23</sup> E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 201–202.

<sup>24</sup> *Ibidem*, p. 203.

<sup>25</sup> See wider: S. Owczarski, *Świadek koronny – uwagi krytyczne*, *Przełęcz Sądowy* 1993, no. 11–12; For a broader and comparative view on the assessment of statements by a crown witness, please see and compare further: Warsaw Court of Appeal Judgment of October 29<sup>th</sup>, 2018, case reference II AKa 324/18; Warsaw Court of Appeal Judgment of November 16<sup>th</sup>, 2016, case reference II AKa 148/16; Lublin Court of Appeal Judgment of July 7<sup>th</sup>, 2015, case reference II AKa 57/15; Wrocław Court of Appeal Judgment of May 20<sup>th</sup>, 2015, case reference II AKa 112/15; Warsaw Court of Appeal Judgment of April 19<sup>th</sup>, 2012, case reference II AKa 17/12; Decision of the Supreme Court of February 2<sup>nd</sup>, 2009, case reference II KK 224/08; Supreme Court Judgment of April 3<sup>rd</sup>, 2006, case reference II KK 20/05; Katowice Court of Appeal Judgment of December 16<sup>th</sup>, 2004, case reference II AKa 223/04; Warsaw Court of Appeal Judgment of March 31<sup>st</sup>, 2004, case reference II AKa 49/04; Warsaw Court of Appeal Judgment of September 19<sup>th</sup>, 2012, case reference II AKa 218/12.



to the personal interest of the accuser, aiming, for example, to shift blame onto another person or even to reduce their own guilt"<sup>26</sup>. The Supreme Court also defined the term "accusation". "The concept of an 'accusation', functioning in colloquial language as a synonym for false accusation, i.e., intentionally false, groundless ascription of a specific, reprehensible behaviour to someone that did not actually occur, cannot be equated with the concept of explaining negative facts unfavourable to someone by revealing facts that are, at the same time, true"<sup>27</sup>. Taking into account the opinion of the Supreme Court, it should be stated that one should not *a priori* challenge what a crown witness says in court. However, one must approach their testimony with the utmost diligence, analysing every word they utter. When assessing "accusations", one should be guided by knowledge, life experience, and the principles of logical thinking<sup>28</sup>. In another decision, the Supreme Court states: "The accusation by a co-defendant can be considered full-value evidence only if, in the context of specific findings, it is not inconsistent with other evidence, and above all, does not present various versions of the same event. When assessing evidence from an accusation, the principle of not unlimited trust should apply, but the principle of distrust until the content of the accusation has been corroborated under Article 3, paragraph 1 of the Code of Criminal Procedure (currently Article 4 of the Code of Criminal Procedure). The mere fact that an explanation incriminating another person was given by a co-defendant does not prove that the circumstances and facts contained in it actually occurred, but it is merely information about facts requiring confirmation or exclusion by means provided for in procedural law"<sup>29</sup>.

It should be noted that according to the judgment of the Court of Appeal in Poznań of June 2<sup>nd</sup>, 2021: "The mere fact that a conviction is based on the testimony of only one witness, even in a situation where the accused does not admit guilt, by itself cannot be the basis for an accusation of making incorrect or arbitrary factual findings in the case. There is no evidentiary rule that would justify the view that the testimony of a single witness is an insufficient basis for conviction, regardless of the role the witness holds, their social status, or whether they benefit from any special procedural rights (such as a crown witness, a so-called minor crown witness, or an incognito witness). However, case law accepts that this kind of 'sole' evidence cannot be in contradiction with other evidence that may not have decisive relevance to criminal liability issues, but still forms the basis for making

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<sup>26</sup> Supreme Court Judgement of October 11<sup>th</sup>, 1977, case reference VI KRN 235/77.

<sup>27</sup> Supreme Court Judgement of January 8<sup>th</sup>, 1988, case reference IV KR 175/87.

<sup>28</sup> See wider: A. Lach, *Instytucja świadka koronnego w prawie angielskim z uwzględnieniem rozwiązań polskich*, „Przegląd Policyjny” 2002, No. 1, pp. 94-95.

<sup>29</sup> Decision of the Supreme Court of March 3<sup>rd</sup>, 1994, case reference II KRN 8/94.

or verifying factual findings relating to specific aspects of the event"<sup>30</sup>. Therefore, it is not possible to *a priori* question or reject the content of crown witness statements. As highlighted in the 2008 judgment of the Court of Appeal: "(...) Of course, it cannot be ruled out that individuals who have obtained the status of this witness may treat their statements instrumentally, but it is also not possible to formulate a general command of distrust towards them solely because they testify in a specific procedural situation and benefit from disclosing their own and others' criminal activities"<sup>31</sup>.

It should be emphasized that the court appoints a crown witness during the course of preparatory proceedings for the entire criminal procedure in a given case. The preparatory proceedings in which the witness is appointed are ongoing and may encompass prohibited acts other than those which the prosecutor was investigating at the time the court decided on the crown witness. Article 3, paragraph 1, point 1 of the Crown Witness Act does not imply that a person granted the status should merely reiterate their previous explanations. The scope of conducted hearings is also not limited to these sole explanations<sup>32</sup>.

The assessment of the credibility of a crown witness's testimony may benefit from the procedural-criminalistic activity of confrontation. However, it does not have an obligatory character. The authority conducting the proceedings, while considering the circumstances of the case each time, assesses the appropriateness of its implementation<sup>33</sup>.

For the conversion of procedural roles to take place in the form of a change in the accused's position to that of a witness, the discussed conditions must be fulfilled. It is crucial for these conditions to be fulfilled collectively.

### **3. The optional condition of the suspect's obligation to return the material benefit gained from the offense or fiscal offense, as well as to compensate for the damage caused as a result of its commission**

The obligation of the suspect to return the material benefit obtained from the offense or fiscal offense and to remedy the resulting damage belongs to the substantive conditions for obtaining the status of a crown witness. However, the obligations listed in Article 3, paragraph 2 of the Crown Witness Act are of an optional

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<sup>30</sup> Poznań Court of Appeal Judgement of June 2<sup>nd</sup>, 2021, case reference II AKa 48/21 in connection with the Supreme Court Judgement of January 11<sup>th</sup>, 1996, case reference II KRN 178/95.

<sup>31</sup> Krakow Court of Appeal Judgement of October 27<sup>th</sup>, 2008, case reference II AKa 102/08.

<sup>32</sup> Decision of the Supreme Court of May 11<sup>th</sup>, 2006, case reference V KK 447/05.

<sup>33</sup> Warsaw Court of Appeal Judgement of December 13<sup>th</sup>, 2017, case reference II AKa 242/17.

nature. This may be due to the fact that crown witnesses are predominantly low-level criminals within the hierarchy of a group or criminal organization. Making the grant of crown witness status dependent on the return of the material benefit gained from the offense and the compensation for the damage caused would likely lead to a drastic reduction in the number of crown witnesses and render the institution ineffective. Therefore, the decision to impose this obligation on a crown witness should be preceded by an examination of its justification and the practical feasibility of compliance by law enforcement authorities, tax administration, and local authorities. As part of the verification process, the relevant authorities should assess the financial situation of the suspect, disclose significant components of their assets, and investigate the source of these assets. It is important to trace the suspect's banking transactions during the period covered by the allegations. If the gathered evidence indicates that the suspect gained a material benefit from the committed offense, they should be obliged to return it in full<sup>34</sup>. Tomasz Grzegorzcyk expressed the opinion that "if the suspect obtained a benefit or caused damage, such a condition should always be imposed; the perpetrator cannot derive material benefits from the offense, even if they are not sentenced due to their contribution to the elimination of the group (association) in which they operated"<sup>35</sup>. However, the primary consideration should be whether such restitution is realistic and will not lead to the prosecutor suspending proceedings under Article 10, paragraph 4<sup>36</sup>. It must be acknowledged that when the prosecutor applies for crown witness status and the court issues a ruling on admitting evidence from the crown witness's testimony (Article 5), they must be aware of the extent of the material benefits gained by the suspect from the committed offense and the scope of the damage caused by it. Otherwise, burdening the suspect with the obligation under Article 3, paragraph 2 of the Act would be unjustified<sup>37</sup>.

The conjunction "and" used in the second paragraph indicates the obligation of the suspect to collectively fulfil the mentioned conditions. In a situation where the suspect did not gain any material benefit but only caused damage, their obligation is limited solely to compensation for that damage. The decision

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<sup>34</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 121.

<sup>35</sup> T. Grzegorzcyk, *Komentarz do ustawy o świadku koronnym*, [in:] *Kodeks postępowania karnego. Komentarz*, wyd. III, Kraków 2003, LEX.

<sup>36</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 121; The risk of reopening the proceedings on this basis also existed under the amended Article 11, paragraph 2 of the Act, modified by Article 1, point 10 of the Act of July 22<sup>nd</sup>, 2006 (Journal of Laws 2006.149.1078), amending the aforementioned Act as of August 31<sup>st</sup>, 2006.

<sup>37</sup> B. Nita, *Instytucja świadka koronnego a dochodzenie roszczeń cywilnych przez pokrzywdzonego przestępstwem*, „Czasopismo Prawa Karnego i Nauk Penalnych” 2002, No. 2, pp. 185–194.

to impose these obligations as mentioned solely rests with the procedural authorities. This means that the prosecutor and the court do not require the suspect's consent to impose these obligations. The suspect does not have any means of appeal regarding the imposition or non-imposition of the obligations under Article 3, paragraph 2 of the Act<sup>38</sup>.

The obligation mentioned in the second paragraph of Article 3 serves primarily to secure the rights of the victim. The absence of this optional obligation would have significant consequences for the victim. They would not be able to pursue property claims arising from offenses committed against a crown witness in a criminal trial<sup>39</sup>. The issue of pursuing civil claims was extensively discussed in doctrine. Stanisław Waltoś stated that the immunity of a crown witness can never extend to the realm of civil law<sup>40</sup>. Thus, the protection of the rights of the victim prompted the introduction of the provision in the second paragraph of the Crown Witness Act. Adding this provision through the 2006 amendment to the Act was a reflection of reinforcing the compensatory function of criminal law<sup>41</sup>.

In certain, particularly justified cases, it should be considered *de lege ferenda* to link the granting of crown witness status to the perpetrator's restitution for the harm caused, in the form of compensation. This indicated compensation, which applies to personal injuries, would express justice both in direct and societal dimensions<sup>42</sup>.

#### 4. Conclusion

The procedural institution of a crown witness is a pragmatic solution that has been proposed by the legislator to aid in combating organized crime. Simultaneously, it remains ethically controversial, as it allows the offender to evade criminal responsibility or at the very least significantly mitigate the impending punishment<sup>43</sup>. The analysed provision, Article 3 of the Crown Witness Act, supplements the

<sup>38</sup> B. Kurzępa, *Świadek koronny...*, *op.cit.*, p. 122.

<sup>39</sup> E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 211.

<sup>40</sup> S. Waltoś, *Świadek koronny-obrzeża odpowiedzialności karnej*, Państwo i Prawo 1993, No. 2, p. 25.

<sup>41</sup> See: A. Ważny, A. Kiełtyka, B. Kurzępa, *Ustawa o świadku koronnym. Komentarz*, Pub. LexisNexis, Warszawa 2013; E.W. Pływaczewski, *Świadek koronny jako instrument zwalczania przestępczości zorganizowanej*, „Prokuratura i Prawo” 2010, No. 7–8, p. 101.

<sup>42</sup> P. Gąska, *Historia instytucji świadka koronnego oraz współczesne problemy jej stosowania* [in:] *Prawo karne na rozdrożu: współczesne tendencje i kierunki zmian*, ed. P. Góralski, Instytut Wydawniczy EuroPrawo, Warszawa 2021, p. 217.

<sup>43</sup> Warsaw Court of Appeal Judgement of February 27, 2023, case reference I ACa 704/22.

definition of a crown witness and allows for the introduction of evidence from their testimony into criminal proceedings. The expansion of the initial version of the provision to include the obligation to disclose the crown witness's assets and provide information about the assets of other members of the criminal group reflects the legislator's concern for the compensatory function of the law and fulfils the demands of doctrine and practice. The final determination of whether the perpetrator fulfilled their sworn commitment and whether their account was exhaustive boils down to confirming that the information they provided indeed contributed in a tangible way to disclosing the circumstances of the crime, identifying additional perpetrators, and potentially uncovering further offenses or preventing them. Another point to emphasize is that the crown witness did not intentionally give false testimony or deliberately conceal the truth<sup>44</sup>. It should be noted that the written protocol serves as the form of disclosing the knowledge of the crown witness candidate.

Progress affects all aspects of life, including the realm of criminal activity. Despite technological advancements, obtaining evidence is not always feasible because the criminal world, particularly in organized form, capitalizes on benefits similar to those enjoyed by law enforcement. This often hampers the effective pursuit of serious offenders. Similarly, the tactic of acquiring personal sources of evidence is paralyzed due to the prevalent sense of threat from the criminal world, both among witnesses and victims. As a result, the law enforcement authorities are deprived of essential testimonies<sup>45</sup>. The procedural institution of a crown witness, being an effective tool in combating the most serious forms of crime, also in terms of admitting evidence from their testimony, requires continuous monitoring and adjustment to the dynamics of social and procedural processes.

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<sup>44</sup> A. Ważny, A. Kiełtyka, B. Kurzępa, *Ustawa o świadku koronnym. Komentarz*, Pub. LexisNexis, Warszawa 2013.

<sup>45</sup> B. Hołyst, *Psychologia kryminalistyczna*, Warszawa 2004, p. 1244.

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