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The material-legal conditions for admitting evidence from the testimony of a crown witness in the Polish criminal procedure

Warunki materialnoprawne dopuszczenia dowodu z zeznań świadka koronnego w polskiej procedurze karnej

Abstract

Crown witness is an institution designed to combat organized crime. The material and legal conditions for admitting evidence from their testimony are contained in Article 1 of the Crown Witness Act. This article provides an analysis of the subject matter scope of the appearance of a crown witness in the Polish criminal proceedings. In the text, the author appropriately presents an analysis of the issues of an organized criminal group and an association aimed at committing crimes, characterizes in an enumerated manner the offenses listed in paragraph 2 of Article 1 of the Criminal Code and the Sports Law. Additionally, the author conducts a detailed review of the negative criteria for obtaining the status of a crown witness. In the text, the author relies on available literature on the subject and domestic court judgments.

Keywords: crown witness, organized criminal group, criminal association, subject matter scope of the Crown Witness Act, negative prerequisites for the status of a crown witness.

Streszczenie

Świadek koronny jest instytucją przeznaczoną do zwalczania przestępczości zorganizowanej. Warunki materialnoprawne dopuszczenia do udziału w postępowaniu dowodu z jego zeznań zawiera art. 1 ustawy o świadku koronnym. Niniejszy artykuł stanowi analizę zakresu przedmiotowego wyśtepowania w polskim procesie karnym świadka koronnego. Autor w tekście prezentuje odpowiednio analizę zagadnień zorganizowanej grupy przestępczej i związku mającego na celu popełnianie przestępstw, charakteryzuje enumeratywnie wymienione w ustępie 2 art. 1 ustawy przestępstwa z Kodeksu karnego i ustawy o sporcie, a także dokonuje szczegółowego przeglądu negatywnych przesłanek uzyskania statusu świadka koronnego. W tekście opiera się na dostępnej literaturze przedmiotu i krajowych orzeczeniach sądowych.

Słowa kluczowe: świadek koronny, zorganizowana grupa przestępcza, związek przestępczy, zakres przedmiotowy ustawy o świadku koronnym, negatywne przesłanki statusu świadka koronnego.

1. Introduction

The institution of the crown witness, which represents a compromise between the integrity of the law and the goal of the institution being the implementation of Western legal thought into Polish criminal procedure. The subject scope of the exceptional law in the Polish legal system, as outlined in case law and literature, should be limited to exceptionally serious crimes for which the disruption of criminal solidarity is necessary for their combat. The scope of the law has undergone numerous changes and currently includes crimes that cannot be classified as the most serious. The Act of July 22, 2006, amending the Crown Witness Act and the Act on the Protection of Classified Information (Journal of Laws No. 149, item 1078), introduced an open catalogue of offenses for which evidence can be presented based on the testimony of a crown witness. These changes allowed for the use of the analysed evidence in cases involving terrorist acts, and the catalogue of corrupt offenses was expanded to encompass the economic sector and professional sports¹. The sole criterion for the admissibility of using evidence from the testimony of a crown witness under paragraph 1 of Article 1 of the Act is the commission of a criminal offense or fiscal offense within an organized criminal group or association aimed at committing criminal offenses². Paragraph 2, on the other hand, lists specific offenses from the Criminal Code and the Sports Law, the commission of which does not need to be correlated with involvement in organized criminal structures.

2. Organized criminal group and association aimed at committing criminal offenses

A crown witness is a suspect who has been allowed to provide testimony as a witness under the regulations specified in the Act of June 25, 1997, on Crown Witness³. A condition for obtaining the status of a crown witness is involvement in the structures of an organized criminal group or an association aimed at committing a criminal offense or fiscal offense. The provisions of the Crown Witness Act limit the attainment of the crown witness status to perpetrators of criminal offenses. Therefore, a crown witness can be a person who commits a specific offense while acting within a criminal group or association⁴. Additionally, the regulations of the

¹ A. Ważny, A. Kiełtyka, B. Kurzępa, *Ustawa o świadku koronnym. Komentarz*, Warszawa 2013.

² E.W. Pływaczewski, *Świadek koronny jako instrument zwalczania przestępczości zorganizowanej*, "Prokuratura i Prawo" 2010, No. 7–8, p. 99.

³ Journal of Laws 2016, item 1197 consolidated text.

⁴ The Court of Appeal, in its judgment, states: "Conviction for participation in a criminal group, whether prior or simultaneous, is not a sine qua non condition for attributing the perpetrator to have acted 'in an organized group' – Article 65 § 1 of the Criminal Code. These are independent factual

Crown Witness Act apply to cases that constitute a closed catalogue of offenses characterized in the Criminal Code and the Act of June 25, 2010, on Sports⁵.

The question then arises: what are organized groups and associations aimed at committing criminal offenses? The Criminal Code and the Crown Witness Act do not provide specific definitions for these terms. It can be assumed that an organized group is a structured assembly of people performing specific tasks, in this case, committing criminal offenses. For a group to be considered organized, there must be an element of internal structure in the form of a hierarchical ladder. Additionally, there should be identifiable leadership. An organized group does not necessarily have to be permanent⁶, and organizational discipline is not required. Typically, joining a group is based on social and environmental contacts. A criminal group must consist of at least three individuals⁷, and its objective should be to commit at least one offense.

Regarding associations aimed at committing criminal offenses, it can be stated that they represent a higher form of criminal organization. They are a group of individuals who act together and share identical criminal objectives. A criminal association has a specific and enduring organizational structure, led by an undisputed leader. Joining such an association is formalized and often involves a special initiation ritual for new members⁸. The Supreme Court has also addressed criminal associations in its rulings. In a judgment dated October 27, 1995, the Supreme

findings and may (but do not have to) occur in a separate proceeding. It is also possible to commit a crime under the conditions of Article 65 § 1 of the Criminal Code without being a member of such a group, but only by acting jointly with it in the commission of a specific offense". Judgment of the Court of Appeal in Warsaw on April 19, 2012, II AKA 17/12.

⁵ Official Journal 2022, item 1599 consolidated text.

⁶ The Court of Appeal states: "The factors supporting the finding of the defendants' actions in an organized group for the purpose of committing crimes include its durability, the planning of crimes with the assurance of a drug supply source, an extensive network of individuals involved in drug trafficking, the existence of premises adapted for storing, counting, dividing, and portioning drugs, providing for the group's needs (financial means, care, legal assistance), coordinated action, and single-person leadership. This group was characterized by a lower degree of organization and formalization of organizational elements, especially in structural aspects, and a higher level of functional organization. It was characterized by the durability of its forms of activity and a high level of member discipline. These characteristics distinguished it from a loose group committing crimes (criminal gangs). Making multiple drug purchases from members of an organized drug trafficking group does not necessarily indicate that the purchaser was a participant (member) of that group". Judgment of the Court of Appeal in Krakow on March 13, 2009, II AKA 155/08.

⁷ L. Gardocki, *Prawo karne*, Warszawa 1998, p. 287; Z. Cwiąkański, *Wybrane problemy wymiaru kary za przestępczość zorganizowaną*, "Prokuratura i Prawo" 2001, No. 12, pp. 7–8; E. Pływaczewski, *Komentarz do rozdziału XXXII Kodeksu karnego* [in:] *Kodeks karny. Część szczegółowa. Komentarz*, Vol. II, ed. A. Wąsek, Warszawa 2004 pp. 361–372.

⁸ M. Bryła, *Porozumienie, zorganizowana grupa, związek przestępczy jako forma organizacyjna przestępczości zorganizowanej*, "Prokuratura i Prawo" 2000, No. 3, p. 36. See: The judgment of the Court of Appeal in Katowice on December 16, 2004, case number II AKA 223/04.

Court pointed out that “the characteristics of an ‘association’ in the context of criminal law are enduring organizational forms, defined leadership, and specific member discipline. A group of people or even a large assembly of individuals, in forming an ‘association’, works to realize certain ideas (principles, programs) within an established internal order, predetermined structures, and acknowledges specific leadership while adhering to established discipline”⁹. In a subsequent ruling, the Supreme Court affirmed that “to determine whether a certain group of people constitutes an ‘association’, it is not essential to consider whether there was a need for organizational discipline but rather whether such discipline was even envisaged. One cannot equate voluntary submission to another person’s authority with an obligation, stemming from an agreement, to carry out their commands with predetermined consequences for refusal to comply”¹⁰.

The provisions of the Crown Witness Act¹¹, in connection with Article 1, paragraph 1 of the same Act, cannot be applied to individuals who act alone or to those who, while acting with others, have not yet formed an organized criminal group or association aimed at committing criminal offenses. The assessment of whether this criterion (organized group or association) has been met is made by the prosecutor when applying to admit evidence from the testimony of a crown witness. The final decision in this matter is made by the relevant district court responsible for conducting the preparatory proceedings in accordance with Article 5, paragraph 1 of the Crown Witness Act¹².

It is also worth noting the wording of Article 258 § 1 of the Polish Criminal Code, which states: “aimed at committing a criminal offense or fiscal offense”¹³. This means that participation in an organized criminal group or association whose members plan to commit only one offense will also be subject to legal penalties. This is a significant change¹⁴ compared to the previous wording of Article 258 of the Criminal Code, in which the legislator stated “aimed at committing criminal offenses, including fiscal offenses”¹⁵. The same change in wording applies to Article 1, paragraph 1 of the Crown Witness Act¹⁶. One can share the legislator’s view and consider this solution

⁹ The judgment of the Supreme Court on October 27, 1995, with the reference number III KRN 122/95.

¹⁰ The judgment of the Supreme Court on March 23, 1992, with the reference number II KRN 433/91.

¹¹ Journal of Laws 2016, item 1197 consolidated text.

¹² B. Kurzępa, *Świadek koronny w polskim procesie karnym*, “Prokuratura i Prawo” 1999, No. 9, pp. 28–29.

¹³ Dz.U.2022.1138 consolidated text.

¹⁴ Article 258 amended by Article 1, point 4 of the Act of April 16, 2004, amending the Criminal Code and certain other laws (Journal of Laws 2004, No. 93, item 889).

¹⁵ Journal of Laws 2022, item 1138 consolidated text.

¹⁶ Article 1 amended by Article 1, point 1 of the Act of July 22, 2006, amending the Crown Witness Act and the Act on the Protection of Classified Information (Journal of Laws 2006, No. 149, item 1078).

appropriate, especially because organized criminals typically commit offenses with the highest qualitative severity and social harm¹⁷. The change allows for the effective penalization of even a one-time criminal activity by these organized groups.

3. The subject matter of the Crown Witness Act

The catalogue of offenses referred to is contained in Article 1 of the Crown Witness Act, which states: paragraph 1: “The provisions of this law shall apply to cases of a criminal offense or fiscal offense committed within an organized group or association aimed at committing a criminal offense or fiscal offense”¹⁸. The legislator has therefore expanded the catalogue of offenses compared to the original wording of the first article¹⁹. The subject matter of the institution of the crown witness encompasses all criminal offenses and fiscal offenses, with the sole condition being involvement in an organized group or association aimed at committing criminal offenses. Article 1 of the Crown Witness Act has evolved several times in subsequent amendments to the law. The fact that the current unified text encompasses all offenses primarily results from the growth of organized crime in Poland. From 1997 to 2007, Article 1 was modified to broaden the scope of the institution of the crown witness. Ending with a comprehensive catalogue of criminal offenses and fiscal offenses. This may also indicate that law enforcement authorities are aware of the unconventional activities of groups and associations aimed at committing criminal offenses. Such an open catalogue of offenses provides a convenient solution for law enforcement agencies, as they can utilize evidence from the testimony of a crown witness in various types of offenses, thus fully implementing their actions in combating organized crime. The current wording of Article 1 will not paralyze the work of the justice system even in the event of unexpected developments in the criminal activities of groups and criminal associations.

It is impossible to list all the offenses falling within the scope of the Crown Witness Act in this space. Furthermore, doing so would involve duplicating the provisions of the Criminal Code and the Penal Fiscal Code²⁰.

As part of the considerations regarding the scope of the Crown Witness Act, it is essential to analyse the content of the second paragraph of the Act. This paragraph is significant because it enumerates specific offenses from the Criminal Code and

¹⁷ Por. B. Kurzępa, *Świadek koronny. Geneza instytucji. Komentarz do ustawy*, Toruń 2005, p. 105.

¹⁸ Journal of Laws 2016, item 1197 consolidated text.

¹⁹ Article 1 amended by Article 1, point 1 of the Act of July 22, 2006, amending the Crown Witness Act and the Act on the Protection of Classified Information (Journal of Laws 2006, No. 149, item 1078).

²⁰ Regarding the subject matter scope of the provision concerning the admission of evidence from the testimony of a crown witness and the questioning of the evidentiary credibility of their testimony, see more: Judgment of the Court of Appeal in Lublin on July 7, 2015, case number II AKa 57/15.

the Sports Law without mentioning their commission within an organized group or association aimed at committing criminal offenses. The second paragraph deviates from the original character of the crown witness institution. Individuals accused of these specified offenses do not need to be part of an organized group or association aimed at committing criminal offenses to obtain the status of a crown witness, provided that they meet the remaining material and procedural requirements.

Article 1, paragraph 2, point 1 of the Crown Witness Act states: “The provisions of this law also apply to cases of offenses defined in Article 228, paragraph 1, and 3–6, Article 229, paragraph 1, and 3–5, Article 230, paragraph 1, Article 230a, paragraph 1, Article 231, paragraphs 1 and 2, Article 250a, paragraphs 1 and 2, Article 258, and Article 296a, paragraphs 1, 2, and 4 of the Criminal Code”²¹.

The enumerated offenses are:

- “Article 228, paragraph 1 of the Criminal Code – passive bribery (venality) – punishment of imprisonment from 6 months to 8 years,
 - Paragraph 3 – aggravated form of venality in connection with the violation of legal provisions, punishment of imprisonment from 1 year to 10 years,
 - Paragraph 4 – the aggravated form of venality involving making a public service conditional on receiving a financial or personal benefit or a promise of such a benefit, or demanding such a benefit, known as extortion of a bribe, with a penalty of imprisonment from 2 to 12 years,
 - Paragraph 5 – the aggravated form of venality involving accepting a significant financial benefit or a promise of such a benefit, with a penalty of imprisonment from 2 to 12 years,
 - Paragraph 6 – passive bribery in connection with holding a public office in a foreign country or in an international organization, with penalties as defined in paragraphs 1–5;
- Article 229, paragraph 1 of the Criminal Code – active bribery (corruption) – punishment of imprisonment from 6 months to 8 years,
 - Paragraph 3 – the aggravated form of corruption in connection with the violation of legal provisions, with a penalty of imprisonment from 1 year to 10 years,
 - Paragraph 4 – the aggravated form of corruption involving the provision of a significant financial benefit or a promise of such a benefit, with a penalty of imprisonment from 2 to 12 years,
 - Paragraph 5 – active bribery in connection with holding a public office in a foreign country or in an international organization, with penalties as defined in paragraphs 1–5;
- Article 230, paragraph 1 of the Criminal Code – the crime of paid protection – punishment of imprisonment from 6 months to 8 years;

²¹ Journal of Laws 2016, item 1197 consolidated text.

- Article 230a, paragraph 1 of the Criminal Code – the offense of active bribery in exchange for intermediation in handling a matter in a state, local, international organization, or national or foreign organizational unit with public resources, involving the unlawful exertion of influence on the decision, action, or omission of a person holding a public office in connection with the performance of that function – punishment of imprisonment from 6 months to 8 years;
 - Article 231, paragraph 1 of the Criminal Code – the offense of exceeding one’s powers or failing to fulfil duties, commonly known as «abuse of power» – punishment of imprisonment up to 3 years²²,
 - “Paragraph 2 – the offense of exceeding one’s powers or failing to fulfil duties in order to gain a financial or personal benefit, with a penalty of imprisonment from 1 year to 10 years”²³;
 - “Article 250a, paragraph 1 of the Criminal Code – the offense of passive bribery in connection with influencing voting – punishment of imprisonment from 3 months to 5 years,
 - Paragraph 2 – the offense of active bribery in connection with influencing voting – punishment of imprisonment from 3 months to 5 years”²⁴;
- Article 258, paragraph 1 of the Criminal Code – the offense of participation in an organized group or association aimed at committing a criminal offense or fiscal offense, punishable by imprisonment from 3 months to 5 years²⁵,
 - Paragraph 2 – participation in an armed group or armed criminal association or those aimed at committing a terrorist offense, punishable by imprisonment from 6 months to 8 years²⁶,
 - Paragraph 3 – founding or leading a criminal group or association, including those of an armed nature, punishable by imprisonment from 1 year to 10 years²⁷,
 - Paragraph 4 – the offense of founding or leading a group or association aimed at committing terrorist offenses, punishable by imprisonment from 1 year to 10 years²⁸;
- Article 296a, paragraph 1 of the Criminal Code – the offense of accepting or demanding a financial or personal benefit or a promise of such a benefit by a person holding a managerial position in an organizational unit engaged in economic activity or having an employment, commission, or work contract relationship with it, in exchange for the abuse of granted authority or the failure

²² E. Kowalewska-Borys, *Świadek koronny w ujęciu dogmatycznym*, Kraków 2004, pp. 175 and 176.

²³ Journal of Laws 2022, item 1138 consolidated text.

²⁴ E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 176.

²⁵ Journal of Laws 2022, item 1138 consolidated text.

²⁶ *Ibidem*.

²⁷ *Ibidem*.

²⁸ *Ibidem*.

to fulfil an obligation that may cause financial harm to that unit or constitutes an act of unfair competition or an impermissible preferential activity to the benefit of a buyer or recipient of goods, services, or performance – punishment of imprisonment from 3 months to 5 years,

- Paragraph 2 – the offense referred to in paragraph 1, in a situation where the offender provides or promises to provide a financial or personal benefit, is subject to the same penalty as defined in paragraph 1,
- Paragraph 4 – the offense referred to in paragraph 1, in a situation where the perpetrator, through their actions, causes significant financial harm, is punishable by imprisonment from 6 months to 8 years²⁹.

Article 1, paragraph 2, point 2 of the Crown Witness Act states: “The provisions of this Act also apply to offenses defined in Article 46, paragraphs 1, 2, and 4, Article 47, and Article 48, paragraphs 1 and 2 of the Act of June 25, 2010, on Sport”³⁰.

The enumerated offenses are:

- Article 46, paragraph 1 of the Sport Act (sports corruption) – “Who, in connection with sports competitions organized by a Polish sports association or an entity acting on the basis of a contract concluded with that association or an entity acting on its behalf, accepts a financial or personal benefit or a promise of such benefit or demands such a benefit or its promise in exchange for dishonest conduct that may affect the outcome or course of these competitions, shall be subject to imprisonment from 6 months to 8 years”³¹,
 - Paragraph 2 – “The same penalty shall apply to anyone who, in cases specified in paragraph 1, provides or promises to provide a financial or personal benefit”³²,
 - Paragraph 4 – “If the perpetrator of the act referred to in paragraph 1 or 2 accepts a financial benefit of significant value or a promise of such benefit or provides such a benefit or its promise or demands such a benefit or its promise, they shall be subject to imprisonment from 1 year to 10 years”³³;
- Article 47 of the Sport Act (dishonest participation in mutual betting) – “Who, having knowledge of the commission of an offense defined in Article 46, participates in mutual betting concerning sports competitions to which this knowledge relates, or discloses this information for the purpose of another person’s participation in such bets, shall be subject to imprisonment from 3 months to 5 years”³⁴;
- Article 48, paragraph 1 of the Sport Act (paid protection in sport) – “Who, referring to their influence in a Polish sports association or an entity acting

²⁹ *Ibidem*.

³⁰ Journal of Laws 2016, item 1197 consolidated text.

³¹ Journal of Laws 2022, item 1599 consolidated text.

³² *Ibidem*.

³³ *Ibidem*.

³⁴ *Ibidem*.

on the basis of a contract concluded with that association, or an entity acting on its behalf, or by creating the belief in another person about the existence of such influence, or by confirming them in the belief of the existence of such influence, undertakes to mediate in determining a specific result or course of sports competitions in exchange for a financial or personal benefit or a promise of such benefit, shall be subject to imprisonment from 6 months to 8 years”³⁵,

- Paragraph 2 – “The same penalty shall apply to anyone who provides or promises to provide a financial or personal benefit in exchange for mediating in the determination of a specific result or course of sports competitions, involving the unlawful exertion of influence on the behaviour of a person performing a function in a Polish sports association or an entity acting on the basis of a contract concluded with that association, or an entity acting on its behalf in connection with the performance of that function”³⁶.

The departure from the principle expressed in Article 1, paragraph 1 of the Crown Witness Act was driven by the overriding goal of breaking the solidarity among individuals participating in corrupt practices involving public officials and those in public office. Subsequently, the closed catalogue of crimes was expanded to include offenses related to sports³⁷. These offenses are indeed difficult to detect and prove using conventional methods of evidence. Paragraph 2 of Article 1 does not require the perpetrator to be part of a criminal group or organization when committing the specified crimes. While this situation may occur, participation in a criminal group or organization in the cases mentioned in paragraph 2 is not a *sine qua non* condition for the application of the witness protection institution³⁸.

In its resolution dated December 21, 1999, the Supreme Court emphasized that “the removal of criminal liability for individuals benefiting from the status of a crown witness under Article 9, paragraph 1 of the Act of June 25, 1997, on Crown Witness (Journal of Laws No. 114, item 738) for offenses defined in Article 1, paragraph 2 of this Act (from Article 258, paragraph 1 or 2 of the Criminal Code) only covers participation in an organized group or association aimed at committing crimes”. This resolution is commendable because, in practice, all that is required to benefit from the Crown Witness Act is membership in a criminal group or organization, in addition to meeting the other conditions specified in Article 3 of the Act³⁹.

It’s worth noting that the institution of a crown witness can only be applied in the case of offenses specified in Article 1 of the Crown Witness Act. There are

³⁵ *Ibidem*.

³⁶ *Ibidem*.

³⁷ Article 1, paragraph 2, amended by Article 62 of the Act of June 25, 2010, on Sports (Journal of Laws No. 127, item 857).

³⁸ B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, p. 105.

³⁹ Resolution of the Supreme Court dated December 21, 1999, with the reference number I KZP 44/99, with approving votes from B. Kurzępa, OSP 2000/6 item 95, and K. Tarkowska, “Prokuratura i Prawo” 2000, No. 6, pp. 104–113.

instances where a crown witness testifies in cases involving offenses not listed in the catalogue of offenses in Article 1. In these cases, their testimony can be freely used in proceedings against individuals in which the crown witness appears. In such proceedings, the witness no longer has the status of a crown witness but is considered a *standard* witness⁴⁰.

4. Negative prerequisites for the status of a crown witness

Not every perpetrator of an offense specified in Article 1 of the Crown Witness Act can act as a crown witness in criminal proceedings. Article 4⁴¹ of the Crown Witness Act states that “the provisions of the Act shall not apply to a suspect who, in connection with involvement in an offense or a fiscal offense defined in Article 1: 1) attempted or committed the crime of murder or assisted in the commission of such a crime; 2) induced another person to commit a prohibited act defined in Article 1, in order to initiate criminal proceedings against that person; 3) led an organized group or association aimed at committing an offense or fiscal offense”⁴². Article 4, therefore, indicates three categories of personal exclusions that make it impossible to apply the crown witness institution. These limitations primarily result from principles of social coexistence and the purpose of the crown witness institution⁴³.

The first reason finds its justification in the indisputable observation that human life is the highest value, and its protection does not correspond to any exceptions. The absolute priority of human life, its protection, and the right to life itself are reflected in numerous international acts. Reference can be made to the provisions of the Universal Declaration of Human Rights⁴⁴, the International Covenant on Civil and Political Rights⁴⁵, and the fundamental provisions of contemporary states that unanimously emphasize the issue of the right to life and its protection⁴⁶. Article 38 of the Constitution of the Republic of Poland, dated April 2, 1997, states: “The Republic of Poland ensures legal protection of every human life”⁴⁷. The first point of Article 4 of the Crown

⁴⁰ B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, p. 107. See more: Judgment of the Court of Appeal in Warsaw on April 29, 2005, case number II AKa 90/05; Decision of the Supreme Court on July 9, 2003, III KK 418/02.

⁴¹ Article 4 amended by Article 1, point 3 of the Act of July 22, 2006, amending the Crown Witness Act and the Act on the Protection of Classified Information (Journal of Laws 2006, No. 149, item 1078).

⁴² Journal of Laws 2016, item 1197 consolidated text.

⁴³ See more: Decision of the Supreme Court on June 9, 2004, IV KK 407/03.

⁴⁴ Adopted by the United Nations General Assembly Resolution 217/III A on December 10, 1948, in Paris.

⁴⁵ Adopted as a result of the United Nations conference in New York, under General Assembly Resolution 2200A (XXI) on December 16, 1966.

⁴⁶ E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 193.

⁴⁷ Journal of Laws 1997, No. 78, item 483.

Witness Act concerns the crime of murder, including the basic intentional type (Article 148 § 1 of the Criminal Code), the qualified type of murder (Article 148 § 2 of the Criminal Code), and intentional murder of more than one person (Article 148 § 3 of the Criminal Code). This exclusion also applies to other forms of murder specified in other articles, e.g., Article 118 § 1 and 2 of the Criminal Code (genocide), Article 123 § 1 of the Criminal Code (an attack on the lives or health of prisoners of war or the civilian population)⁴⁸. These are the most serious crimes, punishable by the harshest penalty of life imprisonment. In light of the above, it is reasonable to approve the exclusion of the possibility of acting as a crown witness in the event of the commission of a crime under Article 148 of the Criminal Code by a suspect. Furthermore, the legislator extends the exclusion not only to the commission of intentional murder but also to its attempted commission and various modes of participation, including complicity, leadership, instigation, and aiding and abetting. In literature, there are opposing views regarding the wide-ranging exclusion from applying the crown witness institution⁴⁹. It is essential to understand “persons who cooperate in committing or attempting to commit a murder as including instigators, accomplices, principal offenders, leaders, and accessories”⁵⁰. Bolesław Kurzępa argues that this is unjust, and in the interest of citizens’ safety, the use of the crown witness institution should be allowed for perpetrators whose involvement in the crime under Article 148 of the Criminal Code is less significant (e.g., instigators or accessories). The author believes that through crown testimony, other perpetrators of the crime can be exposed and punished, even at the cost of acquitting one of them, thereby protecting society from further attacks⁵¹.

The second reason for the limitation in Article 4, point 2 of the Crown Witness Act is provocation to commit a crime. The legislator has eliminated the possibility of applying this institution to individuals inciting others to commit a crime under Article 1 of the Act. Provocation is defined in Article 24 of the Criminal Code, which states that “A person who, in order to initiate criminal proceedings against another person, incites them to commit a prohibited act shall be liable as if for instigation”⁵². Article 4, point 2 of the Crown Witness Act, in relation to this provision, serves as a *lex specialis* and limits the exclusion to crimes under Article 1 of the Act. It should be noted that if a suspect incites another person to commit a crime under Article 1 but does so without the intent to bring criminal liability upon that person, they can

⁴⁸ From the justification of the government’s draft law dated June 5, 2006, amending the Crown Witness Act, Polish Sejm 5th term, publication number 651. See more: EW. Pływaczewski, *Świadek koronny...*, *op.cit.*, pp. 101–102.

⁴⁹ E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p.194.

⁵⁰ M. Gabriel-Węglowski, *Ustawa o świadku koronnym. Komentarz. Zarys instytucji w Europie*, Warszawa 2011, p. 95. Cf. W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków 2010, p. 247.

⁵¹ B. Kurzępa, *Świadek koronny w polskim...*, *op.cit.*, p. 31. See more: Decision of the Supreme Court on February 2, 2009, case number II KK 224/08; Judgment of the Court of Appeal in Krakow on October 27, 2008, II AKa 102/08.

⁵² Journal of Laws 2022, item 1138 consolidated text.

freely apply for crown witness status. The restriction deserves approval. This leads to a contradictory situation in the evaluative sphere. On the one hand, the legislator condemns deceit, provocation, and believes that a person who uses them does not deserve the benefits of the Crown Witness Act. On the other hand, the essence of the institution itself is based on a kind of betrayal of former criminal associates. The effective functioning of law enforcement agencies and the disclosure of the most serious crimes through evidence from the testimony of a crown witness closely aligns with the morally negative stance of a kind of “betrayal” of associates. This is, therefore, a paradox. It is likely that the inclusion of Article 4, point 2 was intended to prevent the abuse of the crown witness institution for mutual criminal manoeuvring. This could involve deceptively inciting members of rival criminal groups and associations to commit crimes and then notifying law enforcement authorities about their actions. In summary, the exclusion mentioned pertains to incitement to commit a crime, but only with the intention of bringing criminal liability against the person incited⁵³. It is important to emphasize that, according to the judgment of the Court of Appeals of October 29, 2018, a situation in which the testimony of a crown witness constitutes the only incriminating evidence in a case does not disqualify it as a source of evidence, and the testimony remains a valid means of proof⁵⁴.

The third type of limitation referred to in Article 4, point 2 of the Crown Witness Act pertains to the inability to use a suspect as a crown witness if they were leading an organized criminal group or association aimed at committing a crime. This exclusion is justified by the undeniable fact that the individuals who lead criminal groups and associations reap the most significant profits from criminal activities. Contrary to the purpose of the institution, it would be inappropriate to approve a solution that provides legal benefits to individuals without whom criminal activities could not exist. “Leading” is understood as “managing someone, something, being at the helm of something, instructing someone on how to proceed”⁵⁵. Leading a criminal group or association involves actual supervision over its activities, issuing orders to subordinates, and making decisions on critical matters. It also includes charting the direction of criminal activities. Holding leadership positions can be of a permanent or temporary nature. It is important to note that designating a member, for example, to manage a specific task or activity, or temporarily assuming a leadership role, such as during short-term unavailability, does not constitute leading a criminal group or association under the Act⁵⁶. Following the enactment of the Act of July 22, 2006, amending the Crown Witness Act and the Act on the Protection of Classified Information⁵⁷,

⁵³ E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 194; B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, p. 128.

⁵⁴ Judgment of the Court of Appeal in Warsaw on October 29, 2018, II AKa 324/18.

⁵⁵ *Słownik języka polskiego PWN*, <https://sjp.pwn.pl/> [access: 2.11.2020].

⁵⁶ B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, p. 128.

⁵⁷ Journal of Laws 2006, No. 149, item 1078.

Article 4 received new wording. The phrase “established an organized criminal group or association” was eliminated, leaving only the term “led”. The change was influenced by the opinion of legal scholars who called for the elimination of the verb “established”, suggesting that criminal groups and associations are characterized by the significant variability in the positions of their members. Under the previous legal framework, a situation could arise in which the founder of a criminal group or association became an ordinary member of it and was nonetheless unable to apply for crown witness status. Therefore, the modification of Article 4 should be welcomed. In addition to the dominant role in committing crimes, the justification for the exclusion under the third point serves another goal of the institution: “catching big fish with small ones”, never the other way around. The goal of the institution is to dissect the entire criminal machinery and break it from within. This will allow the exposure of how it functions and the punishment of all perpetrators of crimes, particularly its leadership⁵⁸. Individuals constituting the core of the criminal hierarchy generally possess the most comprehensive knowledge of committed crimes and perpetrators. Their knowledge could contribute to the speed of gathering evidence. Hence, it’s not uncommon to propose allowing these cases to also make use of the crown witness institution⁵⁹.

The presence of even one of the negative prerequisites listed in Article 4 of the Crown Witness Act precludes a suspect from benefiting from the crown witness institution. If, during the preparatory proceedings, the prosecutor determines the existence of any of the negative conditions, they cannot petition the court for granting crown witness status. If the relevant regional court overseeing the location of the preparatory proceedings, in cases where the prosecutor’s office overlooks this matter, identifies the presence of a condition from Article 4, it will issue a ruling refusing to admit evidence from the testimony of a crown witness. However, when these circumstances are revealed during a trial while the crown witness is giving testimony, the Act does not provide the option to revoke the ruling made under Article 5 of the Crown Witness Act⁶⁰. In this situation, the prosecutor is obliged to resume the suspended proceedings based on Article 10, Paragraph 3 of the Crown Witness Act⁶¹. Furthermore, if one of the conditions mentioned is only revealed after the termination of the proceedings against the crown witness (within five years

⁵⁸ E. Kowalewska-Borys, *Świadek koronny...*, *op.cit.*, p. 195; B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, p. 129; *eadem*, *Świadek koronny w polskim...*, *op.cit.*, p. 32.

⁵⁹ P. Gąska, *Historia instytucji świadka koronnego oraz współczesne problemy jej stosowania* [in:] *Prawo karne na rozdrożu: współczesne tendencje i kierunki zmian*, ed. P. Góralski, Warszawa 2021, p. 216.

⁶⁰ K. Cesarz, *Dowód z zeznań świadka koronnego na tle prawa do sądu (wybrane zagadnienia)*, “Przełęcz Sądowy” 2004, No. 4, p. 74. See more: Judgment of the Court of Appeal in Katowice on March 6, 2003, II AKa 454/02.

⁶¹ See more: Decision of the Supreme Court on July 13, 2006, case number III KK 333/05; Judgment of the Supreme Court on February 2, 2006, case number II KK 100/05; Decision of the Supreme Court on May 10, 2005, case number II KK 531/04.

from the date of the final decision to terminate the proceedings), the prosecutor will reopen the proceedings against them. However, it is essential for the negative prerequisites to be established by a final and binding judgment⁶².

5. Conclusion

The consolidated text of the Crown Witness Act, which has remained unchanged since 2016, reflects the well-established position of compromise solutions. The changes introduced over the years to shape the Crown Witness Act into its final form should be welcomed with approval. The open catalogue of crimes, the commission of which in the conditions of organized crime enables the extensive use of the witness protection institution, results in significant benefits for societal safety indirectly due to the functioning of the Act. The solidarity of criminal groups and associations can be effectively broken, and they can be annihilated. The use of evidence from a witness under protection is also possible in the realm of terrorist offenses and widely in acts of a corrupt nature. A positive change also pertains to limiting the negative prerequisites for acting as a protected witness to directing an organized group or a criminal association. The previous provision prevented the use of the Act in relation to individuals who established such structures, which often eliminated valuable sources of evidence considering the dynamic nature of various criminal structures. The crown witness institution is an effective mechanism for combating crime. Its shape should depend on current needs correlated with socio-economic changes and should be modified according to changing circumstances.

Bibliography

- Bryła M., *Porozumienie, zorganizowana grupa, związek przestępczy jako forma organizacyjna przestępczości zorganizowanej*, "Prokuratura i Prawo" 2000, No. 3.
- Cesarz K., *Dowód z zeznań świadka koronnego na tle prawa do sądu (wybrane zagadnienia)*, "Przebieg Sądowy" 2004, No. 4.
- Ćwiąkalski Z., *Wybrane problemy wymiaru kary za przestępczość zorganizowaną*, "Prokuratura i Prawo" 2001, No. 12.
- Gabriel-Węglowski M., *Ustawa o świadku koronnym. Komentarz. Zarys instytucji w Europie*, Warszawa 2011.
- Gardocki L., *Prawo karne*, Warszawa 1998.
- Gąska P., *Historia instytucji świadka koronnego oraz współczesne problemy jej stosowania [in:] Prawo karne na rozdrożu: współczesne tendencje i kierunki zmian*, ed. P. Góralski, Warszawa 2021.
- Kowalewska-Borys E., *Świadek koronny w ujęciu dogmatycznym*, Kraków 2004.
- Kurzępa B., *Commentary on the resolution of the Supreme Court dated December 21, 1999, Case No. I KZP 44/99 (OSP 2000/6 item 95)*.

⁶² B. Kurzępa, *Świadek koronny. Geneza...*, *op.cit.*, pp. 129–130 and 158.

- Kurzępa B., *Świadek koronny. Geneza instytucji. Komentarz do ustawy*, Toruń 2005.
- Kurzępa B., *Świadek koronny w polskim procesie karnym*, "Prokuratura i Prawo" 1999, No. 9.
- Pływaczewski E., *Komentarz do rozdziału XXXII Kodeksu karnego [in:] Kodeks karny. Część szczególna. Komentarz*, Vol. II, ed. A. Wąsek, Warszawa 2004.
- Pływaczewski E.W., *Świadek koronny jako instrument zwalczania przestępczości zorganizowane*, "Prokuratura i Prawo" 2010, No. 7–8.
- Słownik języka polskiego PWN*, <https://sjp.pwn.pl/>.
- Tarkowska K., Commentary on the resolution of the Supreme Court dated December 21, 1999, Case No. I KZP 44/99 ("Prokuratura i Prawo" 2000, No. 6).
- Ważny A., Kiełtyka A., Kurzępa B., *Ustawa o świadku koronnym. Komentarz*, Warszawa 2013.
- Wróbel W., Zoll A., *Polskie prawo karne. Część ogólna*, Kraków 2010.

Legal Acts

- The Constitution of the Republic of Poland from April 2, 1997 (Journal of Laws 1997, No. 78, item 483).
- The Universal Declaration of Human Rights adopted by the United Nations General Assembly under Resolution 217/III A on December 10, 1948, in Paris
- The International Covenant on Civil and Political Rights adopted as a result of the UN conference in New York, under General Assembly Resolution No. 2200A (XXI) on December 16, 1966.
- Act of June 6, 1997, Criminal Code (Journal of Laws 2022, item 1138 consolidated text).
- Act of June 25, 1997, on Crown Witness, consolidated text.
- Act of April 16, 2004, amending the Act – Criminal Code and certain other acts (Journal of Laws 2004, No. 93, item 889).
- Act of July 22, 2006, amending the Act on Crown Witness and the Act on the Protection of Classified Information (Journal of Laws 2006, No. 149, item 1078).
- Act of June 25, 2010, on Sport (Journal of Laws 2022, item 1599 consolidated text).

Case Law

- Judgment of the Supreme Court from March 23, 1992, file reference: II KRN 433/91.
- Judgment of the Supreme Court from October 27, 1995, file reference: III KRN 122/95.
- Judgment of the Supreme Court from February 2, 2006, file reference: II KK 100/05.
- Resolution of the Supreme Court from December 21, 1999, file reference: I KZP 44/99.
- Ruling of the Supreme Court from July 9, 2003, file reference: III KK 418/02.
- Ruling of the Supreme Court from June 9, 2004, file reference: IV KK 407/03.
- Ruling of the Supreme Court from May 10, 2005, file reference: II KK 531/04.
- Ruling of the Supreme Court from July 13, 2006, file reference: III KK 333/05.
- Ruling of the Supreme Court from February 2, 2009, file reference: II KK 224/08.
- Judgment of the Court of Appeal in Katowice from March 6, 2003, file reference: II AKa 454/02.
- Judgment of the Court of Appeal in Katowice from December 16, 2004, file reference: II AKa 223/04.
- Judgment of the Court of Appeal in Warsaw from April 29, 2005, file reference: II AKa 90/05.
- Judgment of the Court of Appeal in Krakow from October 27, 2008, file reference: II AKa 102/08.
- Judgment of the Court of Appeal in Krakow from March 13, 2009, file reference: II AKa 155/08.
- Judgment of the Court of Appeal in Warsaw from April 19, 2012, file reference: II AKa 17/12.
- Judgment of the Court of Appeal in Lublin from July 7, 2015, file reference: II AKa 57/15.
- Judgment of the Court of Appeal in Warsaw from October 29, 2018, file reference: II AKa 324/18.