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mgr Grzegorz Łaskawski
ORCID: 0000-0003-3640-1300
e-mail: glaskawski@ur.edu.pl
Instytut Nauk Prawnych
Uniwersytet Rzeszowski

The issues of the basic principles of the criminal process

Problematyka naczelnych zasad procesu karnego

Abstract

The design of the criminal process is based on general assumptions adopted by the legislator as optimal due to the value system in force at a given place and time. Considerations covering issues related to the model of criminal proceedings are mainly determined by procedural rules, which to a greater or lesser extent result from criminal procedural norms. It can be said that they are a kind of concepts shaping the process, indicating its individual features, through which its characteristic elements are manifested.

Keywords: criminal procedure, principles of the criminal procedure, model of the criminal procedure.

Streszczenie

Ukształtowanie procesu karnego opiera się na ogólnych założeniach przyjętych przez ustawodawcę jako optymalnych ze względu na obowiązujący w danym miejscu i czasie system wartości. Rozważania obejmujące zagadnienia związane z modelem postępowania karnego w głównej mierze determinowane są przez zasady procesowe, które w większym lub mniejszym stopniu wynikają z norm karnoprocesowych. Można powiedzieć, że są one pewnego rodzaju kształtującymi proces koncepcjami wskazującymi na jego indywidualne cechy, przez które przejawiają się charakterystyczne dla niego elementy.

Słowa kluczowe: procedura karna, zasady procesu karnego, model procesu karnego.

1. Introduction

When considering issues related to procedural rules, we can distinguish basic rules and ordinary rules. This is due to the need to distinguish certain ideas that should be present in the criminal process, as "signposts" for the correct application and interpretation of legal norms. These ideas are assigned the status of basic

principles due to the fact that they are very general and, as a whole, determine the model of the process, while the remaining principles do not regulate such important issues and, therefore, do not influence the model of conduct. However, they refer to issues of a higher or lower rank, but their multitude precludes the possibility of exhaustively enumerating this issue[1].

Generally speaking, it can be said that the basic procedural principles are socially important, general directives that regulate the most important issues of the process. To designate a principle as a basic principle, certain criteria must be met. The first is the nodal process meaning, which means that the lack of a rule would pose a difficulty in defining the process model. From this we can deduce methodological postulates for distinguishing the main procedural principles, above all, excessive multiplication and formulating them in a trivial way should be avoided[2]. It should also be emphasized that a principle is called basic if it is one of at least two concepts that can be applied. Another criterion is the ideological and social content expressed by the principle, which should define the values that are the subject of political disputes, because the system of socio-political relations is closely related to the system of procedural rules. The basic principles of the process influence its model, i.e. they refer directly to the process, regardless of whether it concerns a civil or criminal procedure. They are not those that refer to all branches and areas of law, despite the fact that they have an obvious impact on the process, e.g. the principle of the rule of law. Therefore, the doctrine distinguishes groups of second-level principles that have an indirect impact on the process through the basic principles, giving the right direction in their interpretation as the highest-level directives. The last criterion is the directive nature of the rules, which means that they are not only a kind of regularity, but also a rule of behavior or some other organizational solution. Each principle that meets the above requirements deserves a place in the catalog of basic principles of the process[3].

Both the science of criminal procedural law and practice point to the special role of the basic procedural principles among procedural institutions. It can be firmly stated that in no other branch of law are they as important as in criminal proceedings, because in a broad sense they define its most important features. They should be understood as the structure and model of the process, methods of reaching arrangements, the position of participants and the scope of their guarantees. They create a system characterized by a network of interconnections. The important position of the basic principles of the criminal process is most clearly demonstrated by the widespread reference to them by representatives of the doctrine, practitioners and in court decisions[4].

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[1] S. Waltoś, *Naczelne zasady procesu karnego*, Warszawa 1999, p. 4.

[2] J. Haber, *Podstawowe zasady procesu karnego w świetle projektu kodeksu postępowania karnego*, "Państwo i Prawo" 1969, Issue 2, p. 290.

[3] S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2018, pp. 214–215.

[4] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, pp. 86–89.

The systematics of the Polish Code of Criminal Procedure[5] and the lack of its division into general and specific parts favor the concept of basic procedural principles due to the fact that the provisions that play an important role for the entire process are present throughout the Code. Moreover, the method of carrying out activities at all stages of the process is conditioned by the fact that the efficiency and effectiveness of subsequent stages depend on the results of activities undertaken in the earlier ones. This results in the need to indicate rules relating to the overall process in order to maintain its uniform nature. The role of the basic procedural principles can also be noticed in that they clearly indicate the values that are of key importance for the conduct and results of the proceedings, and are also a model for interpreting the interpretation of its provisions. This is particularly important due to the constant development and new social needs, which require constant changes to the law and its adaptation to new realities, thus threatening its stability. Therefore, instruments are needed to guarantee a reliable and stable foundation for the entire system in the form of basic procedural rules[6].

2. Classification of basic procedural principles

When classifying the basic procedural principles, you can rely on many criteria. One of the most common is the division into abstract principles and concrete principles[7]. This distinction was first formulated by M. Cieślak[8].

Principles in the abstract are general concepts regarding the solution of a key legal problem in a criminal trial, not connected with specific legislation[9]. In this approach, principles may exist as philosophical, political or social ideas, often expressing demands for the legislator to undertake legislative work. Principles in an abstract form do not constitute part of the legal system, being only a model for future solutions *de lege ferenda* or an indication of the direction of legal interpretation, therefore there is no possibility of violating them during the process. It is impossible for the principles to apply in their model, ideal form in a criminal trial. This is related to the adaptation of the rules to social conditions, which results from a certain regularity, i.e. the smaller the legal culture, the less attention is paid to procedural principles[10].

[5] Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego (teskt jedn. Dz.U. z 2022 r., poz. 1375 ze zm.).

[6] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, pp. 95–97.

[7] T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne*, Warszawa 2014, p. 77.

[8] M. Cieślak, *Zasady procesu karnego i ich system*, "Zeszyty Naukowe UJ. Prawo" 1956, No. 3, p. 155 et seq.

[9] S. Waltoś, *Naczelne zasady…*, *op. cit.*, p. 32.

[10] J. Skorupka [in:] *Proces karny*, ed. J. Skorpuka, Warszawa 2018, pp. 126–127.

The principles in concrete terms constitute the applicable legal and procedural norm, therefore they must be complied with in the course of the proceedings. They may be included in a specific, generally formulated provision or in several provisions, implicitly or expressed explicitly. Their violation during the process by the authorities or other participants entails legal consequences provided for in the regulations[11].

Within specific principles, further subdivisions can be made based on the degree of their validity. Here we can distinguish the so-called principles-directives and principles-rules. The author of this concept was R. Dworkin, and then this division was modified by R. Alexy[12]. The first of them is characterized by the fact that they appear as obligatory norms that show the possibility of certain behavior. Due to the fact that there are exceptions to them, they do not have an absolute nature, e.g. the principle of openness. However, in the case of principles-rules, there is an absolute obligation to fully implement them, which is why we can speak of their absolute nature, e.g. the presumption of innocence[13].

Another possible distinction in the context of specific rules may be based on the aspect of their presence in applicable legal provisions. They are distinguished because legally defined principles are included in the applicable legislation in the form of definitions or are at least approximately defined. Examples of such principles include the right to defense or the principle of complaint. Its opposite is a legally undefined principle, also called uncodified, which results from several provisions that create a coherent whole and determine its meaning e.g. the adversarial principle. However, in the absence of a definition resulting from the Act, there may sometimes be difficulties in applying the principle, because its definition is then based on doctrine and case law, which may lead to discrepancies in this respect[14].

An equally important element in the classification is the division into constitutional principles, which are established in the Constitution of the Republic of Poland[15] in a form enabling their direct use, and extra-constitutional principles, resulting from other legal acts, in particular the Code of Criminal Procedure. This division is relative because there are procedural rules that can be found both in the Constitution of the Republic of Poland and the Code of Criminal Procedure, among others: the principles of the presumption of innocence and the right to defense[16].

[11] R. Kmiecik, E. Skrętowicz, *Proces karny. Część ogólna*, Warszawa 2009, pp. 60–61.
[12] S. Waltoś, P. Hofmański, *Proces karny*…, *op. cit*., p. 215.
[13] K. Boratyńska, Ł. Chojniak, W. Jasiński, *Postępowanie karne*, Warszawa 2018, p. 33.
[14] S. Waltoś, P. Hofmański, *Proces karny*…, *op. cit.*, pp. 216–217.
[15] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. nr 78, poz. ze zm.).
[16] C. Kulesza, P. Starzyński, *Postępowanie karne*, Warszawa 2018, p. 18.

3. Functions of basic procedural principles

The concept of function in legal science means the role that a specific issue plays in the sphere of creating legal norms or their application[17]. Based on the literature on the subject, four basic functions can be identified that the basic procedural principles are intended to fulfill:

1. ordering – refers to indicating the path of law-making – these are guidelines for the legislator on which values to provide security if the current legal norms are changed or new legal norms are created, as well as instructions for the operation of specific institutions, especially in the field of dispelling doubts related to methods of regulating institutions from which exceptions have been introduced, e.g. adversarial hearing;
2. identification – it concerns the characterization of the process model – by selecting the implementation of certain superior values and determining the forms of resolving a given category of cases, the process model is marked, which means that the main procedural principles through the content of legal norms make it possible to identify it and distinguish its existing configurations;
3. interpretive – involves determining the appropriate course of interpretation of law on the following levels:
   a) giving principles the role of meta-norm, which should be understood as their influence on the direction of application of legal provisions, if there are any doubts as to the scope of their validity or significance,
   b) recognizing procedural rules in the event of a conflict of norms as rules determining which of them has priority in application,
   c) specifying the possibility for procedural authorities to use the autonomy left to them, i.e. the so-called decision-making slack,
   d) indication of procedural rules as guidelines in how entities exercise their rights;
4. procedural – it should be understood as dispositions resulting from the meaning of the content of a given principle itself, in other words, defining direct procedural tasks and the possibilities of their implementation arising from a specific principle.

The functions mentioned in points 1 to 3 are of a general nature, which should be understood to mean that they apply jointly to all procedural rules, while the function indicated in point 4 is of a detailed nature because they apply only to a specific rule. It should be noted here that all procedural rules simultaneously perform general functions, as well as a specific function separately assigned to each of them[18].

[17] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, p.169.

[18] *Ibidem*, pp. 180–182.

4. Mutual influence and relations between the basic procedural principles

Referring to the system of basic procedural principles, it is necessary to refer to the interactions between them, which can be called their correlation. M. Cieślak believed that the relations between two principles may occur in the following combinations:

1. disjunction (contradiction),
2. derivation, which is a manifestation of superiority and inferiority or equivalence,
3. incompatibility,
4. relatedness.

According to his position, the contradiction of principles occurs in a situation when two principles relating to the same legal issue point to opposite solutions that are mutually exclusive[19]. He introduced the concept of dominant and complementary principles as an attempt to prove how opposing principles operate in the same legal system. This means that if the legal system gives advantage to a certain principle, which is called dominant, the second principle, called supplementary, serves in this system as a complement to the scope not sufficiently regulated by the first one. This author believed that it was necessary to define rules of interpretation which, in the event of ambiguities arising from the relationships of opposing principles, would resolve them positively in favor of the dominant principles. Such a division of principles was intended by M. Cieślak to constitute a compromise, which is the result of the confrontation of a pair of abstract opposite principles, after transposing them into a concrete form[20].

Principle derivation, occurs on the condition that a rule is a logical consequence of another rule. As for the incompatibility and relatedness of the principles, it can be said that they intersect, constituting quantitative variations of one relationship, when the two principles support each other and conflict to a certain extent. Examples of related principles are complaint and adversarial principles, and inconsistent principles include ex officio proceedings and adversarial principles[21].

The solution proposed by M. Cieślak in the form of dividing the principles into dominant and complementary ones has not met with universal acceptance in the doctrine. Most of its representatives draw attention to the contradiction between the concept of dominant and supplementary principles and the idea of a legal norm in the form of a principle that defines its essential elements in criminal proceedings, thus constituting fully defined rules. The dominant nature of the legal norm here excludes the possibility of accepting the cooperation of another contradictory norm.

[19] M. Cieślak, *Polska procedura karna*, Warszawa 1984, p. 206.

[20] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, p. 169.

[21] M. Cieślak, *Polska procedura*…, *op. cit.*, p. 206.

However, in some simplification, M. Cieślak's concept can be treated as a way of presenting the relationship between procedural rules by juxtaposing the concepts of rule – exception[22].

The possibility of the contradiction of principles operating at one stage of criminal proceedings was ruled out, among others, by S. Waltoś, who justified it with the logical principle of contradiction, but pointed out the possibility of one principle being in force and an exception in favor of another, e.g. the existence of the inquisitorial principle as an exception, with the adversarial principle being the rule. This applies to both abstract and concrete principles. The concept of rules and exceptions occurs when one of them covers the space for which they compete, with some exceptions in favor of the other. This does not exclude the possibility of interchangeability of the application of contrary rules at different stages of the process, e.g. the domain of preparatory proceedings is inquisitorial, while the main proceedings are adversarial[23].

Originally, the doctrine made no attempt to systematize the principles, and considerations on this subject were limited to focusing on each of them individually. However, due to the revival of the discussion regarding their significant role, views have emerged stating that the principles can create a certain system. Considerations on this subject remain unfinished to this day[24].

The basic principles of the criminal process are interdependent, creating their own system. There is no consensus in the doctrine on how to approach this system due to the multitude of criteria distinguishing procedural rules from other standards. The lack of compliance concerns, first of all, what should be distinguished among the procedural norms as a principle, as well as the assessment according to which these principles are divided and their system is created.

Determining process principles is often related to the issue of understanding them in a synthetic or analytical form. The synthetic approach focuses on all important elements that constitute a given legal norm and its consequences, for example, the adversarial principle also applies to the presence of entities with equal rights in a dispute. However, from an analytical perspective, the elements or consequences of a given norm defining a procedural principle are considered to be independent principles.

In the science of criminal procedural law, efforts have been made to systematize the existing principles. Taking into account their generality, the basic principles of the first and second degree have been distinguished. The next category is the principles of general law, as well as principles of justice and informality. However,

[22] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, pp. 228–229.

[23] S. Waltoś, *Naczelne zasady*…, *op. cit*., pp. 8–9.

[24] P. Wiliński [in:] *System Prawa Karnego Procesowego*, Vol. III, part 1: *Zasady procesu karnego*, ed. P. Hofmański, Warszawa 2014, pp. 151–152.

within the first-degree principles, there are systemic (organizational) and kinetic principles, also called dynamic.

Another proposed possibility of dividing the system of principles is to distinguish them into general law principles and those relating to the criminal process, which in turn are divided into organizational and systemic principles and strictly procedural principles.

The functionality criterion allows you to distinguish principles in groups:

1. regarding the initiation of a trial – these include the principles of ex officio prosecution, legalism and complaint-making,
2. related to evidentiary proceedings – this group includes the principle of truth, directness, concentration of evidence, as well as free assessment of evidence,
3. including the methods and forms in which the proceedings are conducted – the principle of a fair trial, adversarial nature, openness, orality and speed of proceedings,
4. regarding the situation of the accused – the principle of presumption of innocence and the right to defense are distinguished here[25].

5. Summary

To sum up, it should be emphasized that the most important tasks that the criminal process must meet include achieving substantive truth, and thus the state of both criminal and procedural justice. This purpose is undoubtedly served by isolating the main procedural principles that determine the shape of criminal procedural law and the criminal trial. In other words, they create the most general foundations of the proper administration of justice, as well as delineate the laws on the basis of which the entire system of criminal procedural law is shaped. In a period of instability of the law and hasty reaction of the legislator by changing legal provisions even to insignificant social phenomena, the main principles of the criminal process ensure the stability and functionality of procedural law, constituting its foundation.

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