Z E S Z Y T Y N A U K O W E UNIWERSYTETU RZESZOWSKIEGO

SERIA PRAWNICZA

ZESZYT 108/2019 PRAWO 27

DOI: 10.15584/znurprawo.2019.27.11

Radosław Olszewski

University of Lodz
ORCID: 0000-0001-8119-1635

THE GUARANTEES OF THE SUSPECT AND THE AGGRIEVED PARTY RELATING TO THE ACCESS TO THE CASE FILES OF PREPARATORY PROCEEDINGS IN THE LIGHT OF LEGISLATIVE CHANGES

One of the fundamental functions of the law of criminal procedure is its guarantee function. Its form, as well as the way of its implementation in the operation of the judicial authorities significantly affects the determination of the model of criminal procedure. Because it includes both the principles and methods of achieving procedural aims and the sphere of rights and obligations of the participants of the proceedings. Hence, the guarantee function means that "the norms of the law of criminal procedure provide the protection of human rights and constitutional rights and freedoms of criminal trial participants against the arbitrary, i.e. undue and unlawful, interference of the judicial authorities in these rights, and at the same time they set the boundaries of the acceptable actions of the judicial authorities interfering in the human rights"[1]. It should also be emphasised that "the protection of the superior values, such as human dignity, rights to privacy, family ties, property" remain within the guarantee function[2].

The procedural guarantees are the measures prescribed by law aiming at the protection of certain rights and interests in the criminal procedure[3]. Therefore, the judicial guarantees are distinguished which are widely recognised as the procedural measures laid down in order to protect the proper implementation of the substantive criminal law. They are intended to ensure the effectiveness of criminal prosecution and relevance of penal reaction, and on the other hand to guarantee adequate protection to the participants of the proceedings, especially to the

[1] K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, Warszawa 2017, p. 25.

[2] S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2018, p. 22.

[3] T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne*, Warszawa 2014, p. 55 and literature referred to therein.

accused. The system of procedural guarantees brings us to the notion of the collision of interests which is based on the need for the protection of superior goods, even to the detriment of the system of justice[4]. They are extremely important determinants, connected with the necessity of balancing the actions to achieve aims of criminal procedure, and on the other hand relating to the procedural situation of its participants. This is particularly apparent to in relation to coercive measures. The following issues also remain within the sphere of procedural guarantees, inter alia: legal representation, inadmissibility of evidence, procedural information, including access to case files, participation in procedural acts, extent of tests on a person. The issue of illegal evidence – its nature, possibility of introducing into criminal trial and using – also appear as extremely important and more and more topical in recent years[5].

When speaking about judicial guarantees it should also be indicated that pursuant to Art. 7 of the Constitution of the Republic of Poland, public authorities operate on the grounds and within the law. The constitutional perspective appears as extremely important because the Basic Law is the highest law of the Republic of Poland, and its provisions are applied directly, unless the Constitution provides otherwise (Art. 8 of the Constitution of the Republic of Poland). It should be agreed that the application of the provisions of the Code of Criminal Procedure [k.p.k.] is, first of all, the obligation of their proper interpretation and meticulous implementation of the norms decoded from them. The Court is the final and at the same time most important authority responsible for the implementation of the constitutional standards in criminal trial[6]. At the same time it is worth emphasising that pursuant to Art. 2 of the RP Constitution, the Republic of Poland is a democratic state ruled by law and implementing the principles of social justice.

The importance of Art. 16 § 1 k.p.k.[7] should be indicated in the sphere of the guarantee function of the law of criminal procedure. Pursuant to this Article, if the authority in charge is obliged to instruct the parties to the proceedings of their duties and rights, the lack of such an instruction or an incorrect instruction may not result in any adverse consequences either to the participant or any other person concerned. One example of this is the obligation of a judicial authority to instruct the suspect, on the grounds of Art. 300 § 1 k.p.k., and the aggrieved party, on the grounds of Art. 300 § 2 k.p.k., of the right of access to case files during the preparatory proceedings.

[4] *Ibidem*.

[5] See complex approach to the issues [in:] W. Jasiński, *Nielegalnie uzyskane dowody w procesie karnym*, Warszawa 2019.

[6] P. Wiliński, *Konstytucyjny standard legalności dowodu w procesie karnym* [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018, p. 320–321 and literature referred to therein.

[7] Kodeks postępowania karnego [*The Code of Criminal Procedure*], Act of 6 June 1997, Consol. text: Dz.U. 2018, Item 1987 as amended.

Moreover, the entity conducting the proceedings, if the need occurs, should inform the parties to the proceedings of their rights and duties, even if it is not explicitly required by the law (Art. 16 § 2 k.p.k.)[8].

This institution is based on the obligation of the judicial authorities to provide information relevant to the situation of a given participant of the proceedings. This should be acknowledged as an extremely important manifestation of the reliability of criminal trial, relevant to its democratic character. Because the point is that some specific solutions, important for the rights and duties of the parties to the proceedings, should not remain within the sphere of normative declarations only, but they should find their reflection in the actual actions of the judicial authorities. After all, this is a wider problem consisting in the fact that criminal procedure cannot be analysed only in the context of legal arrangements, but in the context of their implementation by the judicial authorities in such a way that not only allows to achieve the aims set, but also that it is done taking into consideration the rights of the parties to the proceedings. And such an activity should take into account the constitutional context, as well as the standards of the European law and international law. Only in such an arrangement one may talk about real and complete implementation of the guarantee function by the judicial authorities in relation to other participants of criminal procedure, both those against whom the proceedings are conducted, and those whose legal interests were directly threatened or infringed by an offence.

The accused is the main entity with regard to whom the procedural guarantees should be mentioned, because he is the essential party to criminal procedure, and the issue of his liability for the charges brought against him constitutes the subject of the process[9]. He is the so-called passive party, i.e. the one to whose liability the procedure relates and this status is maintained throughout the course of criminal procedure. The notion of the accused *sensu largo* also includes a suspect, i.e. a person with regard to whom a decision was issued to present charges or who, without the issuance of such a decision, was informed about the charges in connection with his interrogation in the capacity of a suspect (Art. 71 § 1 k.p.k.)[10]. The situation is different with regard to the aggrieved party, because

[8] If, in view of the circumstances, the instruction was indispensable and the authority failed to give such an instruction or gave an incorrect instruction, the provisions in Art. 16 § 1 k.p.k. apply accordingly. In the literature, this institution is referred to, inter alia, as the principle of procedural information, e.g. T. Grzegorczyk, *Kodeks postępowania karnego. Komentarz*, vol. 1, Warsaw 2014, p. 104; *Kodeks postępowania karnego. Komentarz*, vol. 1, eds. P. Hofmański, E. Sadzik, K. Zgryzek, Warsaw 2011, p. 165. J. Grajewski wrote about the principle of information, principle of procedural loyalty, principle of fair play. In: J. Grajewski, L.K. Paprzycki, M. Płachta, *Kodeks postępowania karnego. Komentarz*, vol. 1, Warsaw 2003, p. 92.

[9] T. Grzegorczyk, J. Tylman, *Polskie postępowanie*…, p. 48.

[10] See for example: R. Olszewski, *Kumulacja procesowych ról uczestników polskiego postępowania karnego*, Łódź 2013, p. 25–26 and 76.

by operation of law he is a party to preparatory proceedings (Art. 299 § 1 k.p.k.), while at the judicial stage of the criminal trial he is a quasi-party, which means that he has only some of the rights appertaining to the parties in litigation[11]. If he wants to gain the status a fully-fledged party in litigation, in case of offences prosecuted *ex officio* he must act in the capacity of the auxiliary prosecutor, or he may bring an indictment through his attorney, gaining the position of the subsidiary auxiliary prosecutor. Even in the original Code of Criminal Procedure of 1997 it was clearly indicated that one of the aims of criminal procedure is to shape it in such a way that the aggrieved party's interests protected by law would be accomplished. In 2014 it was added that it should be done with respect to his dignity[12]. And the fact of taking into consideration the rights of this party can be seen not only in the Code of Criminal Procedure but also in the normative acts introduced to the legal system, aiming at the protection of his broadly understood interests. This takes place, e.g., in the Act on the protection and assistance to aggrieved parties and witnesses[13], introducing instruments ensuring the safety of this party to criminal procedure. This tendency should be acknowledged as appropriate and necessary, in compliance with the directions of the development of the EU law.

The problem of the access to the case files of preparatory proceedings is an extremely important issue in the guarantee perspective relating to the suspect and the aggrieved party. We should agree with the opinion that the implementation of internal disclosure with regard to the aggrieved party should be examined on three levels: getting acquainted with evidence, informing about procedural actions and participating in such actions[14]. This is also true with regard to a suspect, taking into account the division of the regulations into the access to the basic part of the case files of preparatory proceedings and relating to pre-trial detention. The right to procedural information constitutes an integral element of the criminal trial model. It has a special value for the parties to criminal proceedings shaping their knowledge about the course of the proceedings, creating the basis for undertaking procedural activity. From the perspective of the authorities of preparatory proceedings, these issues are especially important due to the investigative character of this stage. This is connected with the limiting of the access to case files, but the thing is that it happened also with the consideration to the needs and interests of the parties to criminal trial.

[11] *Ibidem*, p. 25–26.

[12] Art. 20(1) of the Act of 28 November 2014 on the protection and assistance to aggrieved parties and witnesses (Dz.U. 2015, Item 21). The new version of the provision has been in force since 8 April 2015.

[13] Act of 28 November 2014 (Dz.U. 2015, Item 21).

[14] R.A. Stefański, *Jawność wewnętrzna wobec pokrzywdzonego w polskim procesie karnym* [in:] *Jawność jako wymóg rzetelnego procesu karnego. Zagadnienia prawa polskiego i obcego*, eds. W. Jasiński, K. Nowicki, Warszawa 2013, p. 179.

The access to case files of investigation is regulated in Art. 156 § 5 k.p.k. Originally, this provision stipulated that, if the Act did not provide otherwise, in the course of preparatory proceedings the parties, defence councils, attorneys and statutory representatives were allowed to have an access to the files, they were allowed to make copies and photocopies or they were allowed to have certified copies issued only with the consent of the entity conducting preparatory proceedings. In exceptional cases, with the consent of the public prosecutor, access to the files of preparatory proceedings could be granted to other persons. The Constitutional Tribunal expressed their opinion about this provisions indicating the imperfection of the regulation which does not stipulate clear, statutory criteria of refusal to make files available in the course of preparatory proceedings. First, in the Judgement of 3 June 2008 the Tribunal decided that Art. 156 § 5 k.p.k. was incompatible with Art. 2 and Art. 42(2) in conjunction with Art. 31(3) of the Constitution of the Republic of Poland to the extent in which this provision made it possible to arbitrarily exclude the openness of the materials of preparatory proceedings which justified the prosecutor's request for pre-trial detention[15]. As a consequence, Art. 156 § 5a was added stipulating in the original version that in the course of preparatory proceedings, the suspect and his defence counsel are granted access to case files in the part containing evidence indicated in the request for applying or extending pre-trial detention or in the decision applying or extending pre-trial detention. The public prosecutor could deny access to the files in this part only in the case of a justified fear that such access might endanger the life or wellbeing of the aggrieved party or another participant to the proceedings, or that it might result in the destruction, hiding or the creation of false evidence or in the impossibility of identifying or capturing an accomplice to the offence with which the suspect is charged or perpetrators of other offences revealed in the course of the proceedings, or that it might disclose operational or investigative activities or would in some other way obstruct preparatory proceedings[16].

Then, in the Judgement of 20 May 2014 the Constitutional Tribunal ruled that Art. 156 § 5 in conjunction with Art. 156 § 5a in conjunction with Art. 159 is admittedly in line with the principle of definiteness of law derived from Art. 2

[15] K 42/07, Dz.U. 2008, No. 100, Item 648.

[16] Ustawa z dnia 16 lipca 2009 r. o zmianie ustawy – Kodeks postępowania karnego (Dz.U. 2009, No. 127, Item 1051). About defects and contradictions to the constitutional and convention requirements of its original version see wider: P. Kardas, *Jawność wewnętrzna i zewnętrzna postępowania przygotowawczego* [in:] *Jawność jako wymóg rzetelnego procesu karnego. Zagadnienia prawa polskiego i obcego*, eds. W. Jasiński, K. Nowicki, Warszawa 2013, p. 28–29 and 40–60. See also: R. Ponikowski, *Granice jawności wewnętrznej i zewnętrznej przygotowawczego stadium postępowania karnego* [in:] *Jawność procesu karnego*, ed. J. Skorupka, Warszawa 2012, p. 178–188. The provision was amended several times. Now it reads as follows: If in the course of preparatory proceedings, the request for applying or extending pre-trial detention has been filed, the suspect and his defence counsel are immediately granted access to case files in the part containing evidence indicated in the request, excluding evidence by witness referred to in Art. 250 § 2b.

of the Constitution of the Republic of Poland, but to the extent in which it made it possible for the entity conducting preparatory proceedings to make arbitrary, not dependent on the occurrence of any statutory conditions, decision to refuse the suspect and his defence counsel to have access to case files and to make copies or photocopies, including a part of the files constituting the grounds for applying preventive measures with regard to the suspect, with the simultaneous lack of the possibility to have this decision controlled by the court, was recognised as incompatible with Art. 42(2) in conjunction with Art. 31(3) of the RP Constitution[17]. This provision was amended by the Act of 11 March 2016, which came into force as of 15 April 2016[18].

So the rulings of the Constitutional Tribunal resulted on the one hand in defining a separate way of procedure with regard to the access to case files in connection with the application of pre-trial detention, and on the other hand, in defining the criteria of the access to the case files of preparatory proceedings, so as to minimalize the risk of limiting this right of the participants of the proceedings by arbitrary decisions of judicial authorities[19]. Such a direction of legislative changes should be recognised as justified and required. The regulations relating to such important issues as the parties' access to case files may not be left only to discretionary decisions of the judicial authorities. Because this involves the risk of unrestrained narrowing down the individual rights at the first stage of criminal procedure, which is difficult to reconcile with the guarantee function of the law of criminal procedure.

[17] Dz.U. 2014, Item 694.

[18] Dz.U. 2016, Item 437. Now Art. 156 § 5 k.p.k. reads as follows: If there is no need for ensuring the correct course of proceedings or protecting an important state interest, in the course of preparatory proceedings the parties, defence councils, attorneys and statutory representatives were allowed to have an access to the files, they were allowed to review case files, make certified copies or photocopies; this right is also vested in the parties after the conclusion of preparatory proceedings. The entity conducting preparatory proceedings issues orders with respect to granting access to case files, making copies or photocopies or issuing certified copies. In case of refusing to grant the aggrieved party access to case files as requested by him, he should be informed about the possibility of granting him access to case files at a later date. Upon informing the suspect or his defence counsel about the deadline for getting acquainted with the materials of preparatory proceedings, the aggrieved party, his attorney or statutory representative cannot be refused to have access to case files, make copies or photocopies or to have copies or photocopies issued. In exceptional cases, with the consent of the public prosecutor, access to the files of preparatory proceedings could be granted to other persons. The public prosecutor may make the files available in electronic form. This provision was amended several times.

[19] It is worth noticing only on this occasion that as far as making the files of preparatory proceedings available in the traditional form is acceptable based on a decision also of the entity conducting the proceedings, then in relation to electronic version a decision of the public prosecutor is necessary, see more broadly M. Kurowski [in:] *Kodeks postępowania karnego. Komentarz*, vol. 1, eds. D. Świecki, B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, Warszawa 2017, p. 595.

It should be added that apart from the normative recognition of the criteria, the present contents of Art. 159 k.p.k. also deserve approval, as they stipulate that the parties who were denied access to the files of preparatory proceedings may appeal against this decision. It was also necessary to improve the legal situation here, because the original version of this provision mentioned only interlocutory appeal, whereas as a result of the amendment of 29 March 2007 it was added that this remedy could be submitted to the direct superior of a public prosecutor[20]. It means that in effect this decision was submitted to verification within the subordination line in the organisational structure of the public prosecutor's office. This calls into question the reality of the instance process formulated in such a way. This solution was changed within the so-called great reform of criminal procedure, prepared by the Criminal Law Codification Commission[21]. The indication of the independent court as the appeal body should be considered as appropriate, creating the conditions of real control of negative decisions as to the access to case files.

Access to files in the course of preparatory proceedings truly influences the possibility of exercising the rights by the parties to preparatory proceedings. For the suspect, it is important for the defence against the charge brought, undertaking activities aiming at discontinuation of an investigation, as well as for developing a future line of defence in the perspective of bringing the case before the court. And the situation of the aggrieved party is connected with the exercising of his rights as an active part of the first stage of criminal trial, formulating requests important for conducting and concluding the proceedings, including making decisions relating to possible consensual solutions or future appearances in court[22].

A separate regulation, autonomous with regard to access to case files, is contained in Art. 306 § 1b k.p.k. stipulating that those entitled to file an interlocutory appeal against a decision to decline to initiate an investigation or decision to discontinue an investigation have the right to review the case files. In order to review the files, the public prosecutor may grant access to the files in electronic form. So this provision constitutes *lex specialis* in relation to Art. 156 § 5 k.p.k.[23]

The situation relating to the final revision of the files of preparatory proceedings is presented differently in relation to the regulations shaping the course of investigation. They are then made available at the request of the suspect, about

[20] Act of 29 March 2007 on amending the Act on the public prosecutor's office, the Act – Kodeks postępowania karnego and some other acts (Dz.U. 2007, No. 64, Item 432).

[21] Act of 27 September 2013 on amending the Act – Kodeks postępowania karnego and some other acts (Dz.U. 2013, Item 1247 as amended).

[22] In this perspective the parties' rights to be granted access to case files in connection with the conclusion of preparatory proceedings should not be considered as sufficient.

[23] R.A. Stefański, *Jawność wewnętrzna*…, p. 183.

which he should be informed prior to the first interrogation (art. 300 § 1 k.p.k.). When on 1 July 2015 the so-called great reform of criminal procedure came into force, assuming an adversarial model of criminal procedure and, connected with it, a different extent in relation to the previous solutions of the materials handed over to the court, the institution of final revision of the files of preparatory proceedings was replaced by the final revision to which the aggrieved party and his attorney were also entitled[24]. However, this solution was amended by the Act of 11 March 2016, withdrawing not only the main directions of the changes of criminal procedure, but also particular components of this reform, i.a. the described institution included in Art. 321 § 1 k.p.k. Thus, the institution of final revision of case files was reinstated, at the same time deleting the aggrieved party from this provision. On the other hand, it was accepted by the same amendment that upon informing the suspect or his defence counsel about the deadline for getting acquainted with the materials of preparatory proceedings, the aggrieved party, his attorney or statutory representative cannot be refused to have access to case files, make copies or photocopies or to have copies or photocopies issued (Art. 156 § 5 sentence four k.p.k.). At the same time, Art. 321 § 5 k.p.k., stating that within three days of reviewing the material of the investigation, the parties may submit requests for the investigation to be supplemented, applies without any amendments. The parties – so not only the suspect, but also the aggrieved party. The categorical contents of this provision mean that from the moment stated it is necessary to grant access to the material of the investigation to the aggrieved party, except, the deadline from Art. 321 § 5 k.p.k. does not refer to him, and thus the judicial authority may close the investigation without waiting for any supplementary requests. Therefore, the aggrieved party may formulate motions as to evidence on general principles[25]. Such inconsistency is a sign of unclear and inconsistent legislative solutions, undermining the legal certainty and citizens' trust in the state.

[24] Act of 27 September 2013 on amending the Act – Kodeks postępowania karnego and some other acts (Dz.U. 2013, Item 1247 as amended). If there are grounds to close an investigation, at the request of the suspect, aggrieved party, defence counsel or attorney to be allowed to review the material of the proceedings, the entity conducting the proceedings informs the applicant of the possibility of reviewing the files and of the date on which the files may be reviewed, ensuring that he is given access to the case files together with the information which materials from these files, pursuant to the requirements set in Art. 334 § 1, will be handed over to the court with the indictment, and the instruction about the right referred to in § 5. The mention of the instruction must be made in the transcript of the final revision of the material of the proceedings by the party, defence counsel or attorney. In order to review the files, the public prosecutor may grant access to the files in electronic form.

[25] See, more broadly: M. Kurowski [in:] *Kodeks postępowania karnego. Komentarz*, vol. 1, eds. D. Świecki, B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, Warszawa 2017, p. 1152–1153, 1154–1155 and literature referred to therein.

Summing up the considerations, it should be emphasised that the system of guarantees constitutes an extremely important sphere of criminal procedure. Its form constitutes one of the significant characteristics of the criminal procedure model, both by defining the rights and duties of its participants and by outlining the acceptable extent of the state's interference in the legal situation of the participants of criminal procedure. Yet, the guarantee function is not a function specific for preparatory proceedings, but a general function of criminal trial. The fundamental grounds for its placing among the functions of preparatory proceedings is the fact that at this stage of the procedure the guarantees of the individual rights may be especially threatened by law enforcement authorities[26]. As regards the suspect and aggrieved party, within the context of access to the files of preparatory proceedings the thing is based on rationing such access and, what follows, limiting the possibility of free activity of those participants due to decisions of judicial authorities limiting the access to case materials. The appropriate direction of the legislative changes in this sphere should be emphasised, as it consists in introducing the criteria of refusing to grant access to the files of investigation. Undoubtedly, this has a guarantee dimension in the normative sphere, although the question about the practice of judicial authorities and the actual granting of access to the materials to the parties in the course of the first stage of criminal procedure remains still open. Each decision must take into account the circumstances of a given case, which requires experience and abilities of the persons acting as judicial authorities to assess the influence of the access to the files on the course of criminal trial.

This opinion is not a postulate of wider access to the files of preparatory proceedings, but of basing decisions in this regard on reasonable grounds, resulting from the circumstances of a given case and taking into account also the interests of the parties. Of course, the risk of undertaking by them activities undesirable from the perspective of the judicial authorities cannot be excluded, but this cannot mean automatic refusal to grant access to the files. In view of the above, one should consider as justified the opinion expressed in the literature that preparatory proceedings can be neither fully confidential, excluding any form of the parties' participation and the right to procedural information, nor adversarial, assuming wide participation of the parties in all the activities in which they want to participate. Owing to this, a rational compromise becomes necessary, assuming reconciliation of the arguments relating to the interests of the judicial authorities and the guarantees of achieving the aims of the first stage of criminal procedure, with the arguments of the parties to criminal procedure, including, first of all, the suspect, and creating for him conditions for defence against the

[26] C. Kulesza, *Model postępowania przygotowawczego – perspektywa obrony* [in:] *Proces karny w dobie przemian. Przebieg postępowania*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018, p. 132–133 and literature referred to therein.

charge brought[27]. Decisions of the investigative bodies regarding the access to case files, in line with these assumptions, should be viewed as a manifestation of the implementation of the guarantee function of the law of criminal procedure with regard to the parties to preparatory proceedings.

Bibliography

Dudka K., Paluszkiewicz H., *Postępowanie karne*, Warszawa 2017.

Grajewski J., Paprzycki L.K., Płachta M., *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2003.

Grzegorczyk T., Tylman J., *Polskie postępowanie karne*, Warszawa 2014.

Grzegorczyk T., *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2014,

Hofmański P., Sadzik E., Zgryzek K., *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2011.

Jasiński W., *Nielegalnie uzyskane dowody w procesie karnym*, Warszawa 2019.

Kardas P., *Jawność wewnętrzna i zewnętrzna postępowania przygotowawczego* [in:] *Jawność jako wymóg rzetelnego procesu karnego. Zagadnienia prawa polskiego i obcego*, eds. W. Jasiński, K. Nowicki, Warszawa 2013.

Kulesza C., *Model postępowania przygotowawczego – perspektywa obrony* [in:] *Proces karny w dobie przemian. Przebieg postępowania*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018.

Kurowski M. [in:] *Kodeks postępowania karnego. Komentarz*, vol. 1, eds. D. Świecki, B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, Warsaw 2017.

Olszewski R., *Kumulacja procesowych ról uczestników polskiego postępowania karnego*, Łódź 2013.

Ponikowski R., *Granice jawności wewnętrznej i zewnętrznej przygotowawczego stadium postępowania karnego* [in:] *Jawność procesu karnego*, ed. J. Skorupka, Warszawa 2012.

Stefański R.A., *Jawność wewnętrzna wobec pokrzywdzonego w polskim procesie karnym* [in:] *Jawność jako wymóg rzetelnego procesu karnego. Zagadnienia prawa polskiego i obcego*, eds. W. Jasiński, K. Nowicki, Warszawa 2013.

Waltoś S., Hofmański P., *Proces karny. Zarys systemu*, Warszawa 2018.

Wiliński P., *Konstytucyjny standard legalności dowodu w procesie karnym* [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018.

Summary

The system of guarantees constitutes an extremely important sphere of criminal procedure. Its form constitutes one of the significant characteristics of the criminal procedure model, both by defining the rights and duties of its participants and by outlining the acceptable extent of the state's interference in the legal situation of the participants of criminal procedure. Yet, the guarantee function is not a function specific for preparatory proceedings, but a general function of criminal trial. The article will be devoted to these issues.

Keywords: injured party, suspect, guarantees, preparatory proceedings file, penal code

[27] R. Ponikowski, *Granice jawności*…, p. 138.

GWARANCJE PODEJRZANEGO I POKRZYWDZONEGO DOTYCZĄCE DOSTĘPU DO AKT POSTĘPOWANIA PRZYGOTOWAWCZEGO W ŚWIETLE ZMIAN LEGISLACYJNYCH

Streszczenie

System gwarancji stanowi niezwykle istotną sferę postępowania karnego. Sposób jego ukształtowania to jedna z istotnych cech modelu postępowania karnego, tak poprzez wskazanie praw i obowiązków jego uczestników, jak i zakreślenie dopuszczalnego zakresu ingerencji państwa w sytuację prawną uczestników postępowania karnego. Funkcja gwarancyjna nie jest przy tym funkcją specyficzną dla postępowania przygotowawczego, lecz ogólną funkcją procesu karnego. Tym zagadnieniom poświecony został artykuł.

Słowa kluczowe: pokrzywdzony, podejrzany, gwarancje, akta postępowania przygotowawczego, kodeks karny