

Poland: National Regulations in the Shadow of the Common Past – Criminal Law

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ABSTRACT

Criminal law regulations in each country are among the most delicate and most important legal acts for the functioning of the society. Criminal liability determined in the course of criminal proceedings is the most controversial type of legal liability because unlike other types, it allows, in the majesty of the law, for the deepest type of interference with the status of a free individual, specifically, the status of their rights. Additionally, the positive result of criminal proceedings, namely the statement that someone did indeed commit a crime, has very serious consequences. This is because in general, criminal law is public law, wherein this interference with individuals' rights and freedoms is most apparent. Therefore, on the one hand, in the area of criminal law, there must be a specific balance between the necessity to interfere with the rights of an individual by a public authority and the securing of these rights against possible abuses of this authority. On the other hand, the area of criminal law is particularly susceptible to a wide variety of historical events as well as political, social, and economic influences. This primarily regards time in the sense of historical events, the specificity of the period, or simply the attitude of public authorities toward an individual in society. In this line of thought, analyses showing the general characteristics of each criminal law system, in this case, the system functioning in Poland, are recent and highly interesting.

KEYWORDS

Poland, penal system, criminal law, criminal proceedings, the evolution of criminal law in Poland

1. Brief historical outline of Polish basic legal acts in the area of criminal law

1.1. Penal Code of 1932

The first code of criminal law in the history of Polish law is the Act of July 11, 1932, the Penal Code¹, which in Poland is commonly referred to as the criminal code of Juliusz Makarewicz, taken from the name and surname of a highly regarded Polish

1 Journal of Laws 1932 No. 60, item 571.

Wielec, M. (2022) 'Poland: National Regulations in the Shadow of the Common Past – Criminal Law' in Váradi-Csema, E. (ed.) *Criminal Legal Studies. European Challenges and Central European Responses in the Criminal Science of the 21st Century*. Miskolc-Budapest: Central European Academic Publishing. pp. 99–124. https://doi.org/10.54171/2022.evcs.cls_4

lawyer and co-creator of this legal act. It is among the most exceptional legal regulations in Polish legal thought. This code is the result of the work of the Codification Commission established by a law enacted on June 3, 1919, and operating until the beginning of World War II. At that time, Poland was under partitions for many years, and the legal system was not uniform because it was dependent on the systems of the relevant partitioners (Germany, Russia, and Prussia). Therefore, after Poland regained independence, the above-mentioned Commission was appointed, with the purpose of, *inter alia*, preparation of draft uniform legislation for all Polish territories in the field of civil and criminal law. It needs to be highlighted that the code at that time appeared to be a very modern legal act and was widely respected. It was often emphasized that “this code has such features as clarity, syntheticity of approaches, consistency, even considering it to be technically perfect (...).”² The Code consisted of 295 articles divided into 42 chapters and was divided into two related parts: a) the general part, which contained provisions regulating the basic concepts, institutions, and principles of criminal law and b) the detailed part, which regulated the conditions for criminal liability, covering a variety of defined crimes and penalties. The Code provided for the heaviest penalty, the death penalty, for three types of crimes: aggravated war treason, subversive action during war (guerrillas), and murder.³ Overall, the main and most innovative principles contained in this code were the principle of equality before the law and humanitarianism, the principle of individuality in criminal liability, that is, separate treatment of the responsibility of the perpetrator, assistant, and instigator, and the principle of subjectivism of criminal liability, that is, taking into account the motives of the perpetrators of prohibited acts.⁴

1.2. Decree on crimes particularly dangerous in the period of state reconstruction

The times after the Second World War meant that the penal legislation in Poland underwent enormous changes, unfortunately mostly to the detriment of citizens. While the 1932 Penal Code was a model and became a legend for Polish criminal law order, the post-war criminal law regulations were very negatively assessed. At that time, the authorities in Poland were controlled by the communists, which likely had a major impact on the design of the new criminal law system. Among other things, *the Decree of June 13, 1946, on crimes particularly dangerous in the period of state reconstruction* was introduced. It was also known as the Small Penal Code. The vast majority of this legal act by the communist authorities of the People’s Republic of Poland was intended to fight political opponents in the newly designed Polish system. This legal act suspended some provisions of the special part of the above-mentioned Penal Code of 1932 for the duration of its validity. It was characterized by considerable severity and the possibility of considerable abuse in the interpretation of its provisions. Among other things, this concerned the crime of disseminating false information,

2 Koredczuk, 2011, p. 47.

3 Grześkowiak, 1989, p. 153.

4 Bojarski, 2008, p. 8.

on the basis of which there were often convictions for extremely trivial acts, such as telling jokes or advocating satire on political topics.⁵ The Small Penal Code included the death penalty.⁶ It was in force until December 31, 1969, when the 1969 Penal Code entered into force.

1.3. Penal Code of 1969

The next criminal code in the Polish legal system was the 1969 Penal Code. It was introduced by the *Act of April 19, 1969, the Penal Code*⁷ and was in force from January 1, 1970, to August 31, 1998. It was a completely different legal act compared with the 1932 Penal Code and the aforementioned Decree of 1946. The motives for introducing the new codification of criminal law had their origins in the social, political, geopolitical, and economic transformations of that time.⁸ After the experience of previous years, characterized by overly severe penal sanctions, a different approach to the problem of criminal law in the state was adopted. When designing the new penal code, completely different priorities were chosen. Referring to the 1969 Penal Code, it was emphasized that “the main objectives of this Penal Code were to ease the penal repression for crimes of lesser quality (petty crime) and to limit the use of short-term imprisonment sentences. It introduced a differentiation of criminal liability for a crime according to the degree of severity of the crimes committed, and on the other hand, it assumed severe punishment of perpetrators of crimes with a high degree of social danger of an act and extensive use of freedom measures against perpetrators of minor crimes, especially by eliminating short-term imprisonment sentences.”⁹ In the 1969 Penal Code, new institutions were introduced that were previously unknown in Polish criminal law, such as the restriction of liberty and conditional discontinuation of criminal proceedings. The Code was divided into three parts: a) the general part, which contained the basic principles of incurring criminal liability, b) a detailed part, which contained descriptions of types of offenses and the penalties for committing them, and c) the military part, which contained the principles of soldiers incurring criminal liability along with a list of crimes and penalties pertaining to soldiers.

1.4. Criminal Code of 1997

The currently binding penal code is the Penal Code introduced by the Act of June 6, 1997,¹⁰ which replaced the previously mentioned Penal Code of 1969. The main assumption of the 1997 Penal Code is the general directive of using the provisions of criminal law as a last resort, which results directly from the provision of Article 31 section 3 of the Constitution, according to which restrictions on the exercise of constitutional rights and freedoms may be established only by statute and only if

5 More in Siemaszko, 2015.

6 Mielink, 2017, p. 178.

7 Journal Of Laws of 1969 No. 13, item 94.

8 Grzeškowiak, 2020, p. 131.

9 Melezini, 2019, p. 895.

10 Journal of Laws 1997 No 88, item 553.

they are necessary in a democratic state for its safety or public order or for the protection of the environment, health, and public morality or the freedoms and rights of others. These limitations cannot affect the substance of freedoms and rights. On this basis, the principle was introduced that in the case of offenses subject to alternative sanctions, priority is given to non-isolation sanctions. The application of so-called probation measures (i.e., measures subjecting the perpetrator to a trial) such as conditional suspension of the proceedings and conditional suspension of the execution of the sentence, with the simultaneous tightening of criminal liability for the most serious crimes, added the life imprisonment to the list of penalties. In the new penal code, the death penalty has been abolished. From the recent changes that have occurred in the provisions of the Penal Code of 1997, the introduction of the so-called extended confiscation is worth mentioning. It is a completely new and recently (2017) introduced institution that is undoubtedly an avant-garde and much needed legal solution.¹¹ This institution transfers the burden of proving the legal sources of property to the accused. The point is that in the event of a conviction for a crime in the commission of which the perpetrator has obtained, even indirectly, a material benefit of significant value, the court may order the forfeiture of the enterprise owned by the perpetrator or its equivalent if the enterprise was used to commit the crime or conceal the benefit obtained from it.

1.5. The Code of Criminal Procedure of 1928

The first codification of procedural criminal law in Poland is the Code of Criminal Procedure of 1928. It was introduced in the years of regaining independence, during which the process of the arduous consolidation of legal regulations after the partition period was carried out. Criminal proceedings at that time were regulated by various sources of criminal procedural law and, similarly to criminal law, there was a need for unification. This codification took place on March 19, 1928, through the adoption of the Code of Criminal Procedure.¹² One of the most important elements characterizing the Code of Criminal Procedure of 1928 is based on the model of the so-called reformed process, which was the basis for the introduction of the now known form of mixed process, in which, on an investigative basis¹³ – preparatory proceedings are centered on an adversarial (complaints) basis¹⁴ – the main, that is, court, procedure is founded¹⁵. This model will be repeated in subsequent codifications of Polish criminal proceedings. One of the priorities for the authors of the 1928 Code of Criminal Procedure was also to create fairly extensive procedural guarantees for parties.¹⁶

11 For example, in Poland in 2019, the provisions on extended confiscation were applied in 668 cases, and the seized property was worth over PLN 2.1 billion.

12 Journal of Laws 1928 No.33, item. 313.

13 Baj, 2011, p. 69.

14 Materniak-Pawłowska, 2013, p. 271.

15 Koreńczuk, 2014, p. 339; Łuszczuk, 2012, p. 134.

16 Cieślak, 1969, pp. 27–39; Pasek, 2019a, pp. 183, 203; Pasek, 2019b.

1.6. Code of Criminal Procedure of 1969

Another code of criminal procedure was the Code of Criminal Procedure¹⁷ of 1969. This legal act somewhat softened the position of public authorities in criminal proceedings, including the prosecutor, which is apparent, although the prosecutor's position remained very strong.¹⁸ This was manifested, inter alia, by the fact that they could have applied temporary detention on its own in the course of preparatory proceedings.¹⁹ Nonetheless, in the Code of 1969, an inquisitive, secret preparatory procedure remained, which was excessively complex in relation to the court proceedings. The strong role of the preparatory proceedings was ultimately to lead to the fact that the results of the preparatory proceedings were to be crucial for a court decision.²⁰ Notably, although the Code of 1969 referred to some extent to the codification of 1928, "these changes were – generally speaking – a small step towards better protection of the rule of law, some modernization and limited democratization of proceedings [...]."²¹

1.7. 1997 Code of Criminal Procedure

Ultimately, after the changes to the Polish system initiated after 1989, the binding Code of Criminal Procedure of 1997 was established. The provisions of this code strengthened the position of the court as an independent judicial factor, the procedural powers of the prosecutor's office were reduced, the right of the aggrieved party to court was detailed, the positions of the aggrieved and the accused were adjusted to international standards, the so-called consensual approaches to ending criminal proceedings was emphasized, and so on. The weakening of the prosecution authority was made at the expense of the powers of the court, which was the only entity that could apply, inter alia, temporary arrest, both at the stage of preparatory and judicial proceedings. The prosecutor can only apply for pre-trial detention; however, the decision is always at the discretion of the court.²² Other new institutions in criminal proceedings were also introduced to combat newly emerging, highly complex types of crimes. Among other things, the institution of an anonymous witness (incognito witness) was introduced, whereby a witness who was questioned in the course of criminal proceedings could have withheld or anonymized data revealing their identity due to a well-founded fear of a threat to life, health, freedom, or substantial property of a witness or a person close to them.²³ These data were only at the disposal of the court or prosecutor. Another of these new institutions is the institution of a crown witness who, as a participant in the criminal procedure, in order to improve their procedural situation, agreed to testify as a witness in exchange for waiving or mitigating the penalty.²⁴

17 Journal of Laws 1969 No.13, item 96.

18 Skorupka, 2010, p. 195.

19 Murzynowski, 1984, p. 16.

20 Jasiński, 2010, p. 139.

21 Grzegorzczuk and Tylman, 2014, p. 25.

22 Dąbkiewicz, 2013, p. 110.

23 Wielec, 2020, p. 193.

24 Ocieczek, 2016, p. 30.

2. Main legal sources in the area of criminal law (applicable law)

Criminal law is a specific area of legal regulation in each country. Broadly understood criminal law is an area that defines the rules of incurring criminal liability for a criminal act, the rules of excluding criminal liability (e.g., so-called counterclaims), the catalog of penal measures and penalties provided for regarding a criminal act, the rules for conducting criminal proceedings, and the rules for implementing the decisions of trial proceedings taken in the course of criminal proceedings.

With the above in mind, criminal law in Poland consists of three basic segments.

1. *Material criminal law*, the basic source of which is the Act of 6 June 1997 – Penal Code, which provides for the basic rules of individuals incurring criminal liability, including the description of the crime, circumstances excluding the unlawfulness of the act, the rules of imposing a penalty, issues related to the statute of limitations for incurring criminal liability, provision of a catalog of penalties and penal measures, and so on. In addition to the criminal code, there is also the so-called non-code penal law, which create separate acts from the penal code containing relevant penal provisions. The non-code penal law in Poland includes the Act of August 21, 1997, on the protection of animals²⁵ the Act of April 27, 2001, the Environmental Protection Law,²⁶ and the Act of August 29, 1997, the Banking Law.²⁷
2. *Formal criminal law*, the basic source of which is the Act of June 6, 1997 – Code of Criminal Procedure.²⁸ Formal criminal law is also referred to as procedural criminal law, criminal trial, or criminal procedure. Formal criminal law is a set of legal provisions regulating the rules of conduct of public authorities in criminal cases, the rules of their initiation and conduct, and the mode and forms of individual procedural actions. It provides for a list of rights and obligations of procedural bodies, specifying the catalog of procedural parties along with their rights and duties as well as one of procedural authorities and other participants in criminal proceedings. Moreover, it provides for the rules of collecting, recording, and introducing the collected evidence into criminal proceedings.²⁹ There is a close relationship between formal and substantive criminal law. Formal criminal law plays an auxiliary role in substantive criminal law, activating and implementing it.³⁰

25 Journal Of Laws 1997 No. 111, item 724.

26 Journal Of Laws of 2001 No. 62, item 627.

27 Journal Of Laws 2021, item 2439.

28 Journal Of Laws 1997 No. 89, item 555.

29 Skorupka, 2017, p. 26.

30 Dudka and Paluszkiewicz, 2021, p. 22.

3. *Executive penal law*, the source of which is the Act of June 6, 1997, Executive Penal Code.³¹ The Code contains provisions necessary for the enforcement of penalties imposed in criminal proceedings or other decisions taken therein.³² The provisions of the Executive Penal Code contain rules on the execution of penalties, penal measures, compensatory measures (to redress damage caused by a crime), precautionary measures, other decisions made in criminal proceedings, and so on.³³

3. Relevant (most important) institutions (e.g., the courts, the prosecutor's office) and their roles and powers

The most important institutions participating in criminal proceedings in the doctrine of Polish criminal proceedings are called procedural bodies, which are further defined as state bodies equipped with appropriate powers and entitled to issue decisions at certain stages of the criminal process, often regardless of other powers assigned to them.³⁴

When presenting the most important institutions of criminal proceedings, it should be noted that the construction of Polish criminal proceedings is important. Polish criminal proceedings consist of three stages, in which the organs of the criminal process function properly.

These stages are as follows:

Stage 1 is preparatory proceedings – regulated in the Code of Criminal Procedure

Stage 2 is court proceedings – regulated in the Code of Criminal Procedure

Stage 3 is executive proceedings – regulated in the Executive Penal Code

The above-mentioned stages are characterized later in the article, while here, the analysis covers the individual institutions relevant to the above-mentioned stages of criminal proceedings.

Ad. Stage 1) The most important bodies of preparatory proceedings are, among others, as follows:

The public prosecutor, who is the primary body for preparatory proceedings, conducts and supervises the preparatory proceedings. The main tasks of a public prosecutor within the framework of preparatory proceedings include the initiation and conduct of preparatory proceedings or the ordering of another authorized body to initiate or

31 Journal Of Laws 1997 No. 90, item 557.

32 Gerecka-Żołyńska and Sych, 2014, p. 17.

33 Kuć, 2017, p. 19.

34 Hofmański and Waltoś, 2016, p. 154.

conduct such proceedings as well as to perform the activities of a public prosecutor before a court.

The organizational structure of the Polish prosecutor's office is not without significance here. The basis for the operation of the public prosecutor's office is the Act of January 28, 2016, on the Public Prosecutor's Office.³⁵ It introduces the structure of the prosecution service, which consists of the following:

a) *The National Public Prosecutor's Office*, which is the highest unit in the hierarchy of the public prosecutor's office, is managed by the National Public Prosecutor. The main tasks of the National Public Prosecutor's Office include ensuring the participation of the public prosecutor in proceedings before the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court, conducting and supervising preparatory proceedings, exercising instance and service supervision over proceedings in lower-level prosecutor's offices, and coordination of official supervision over preparatory proceedings conducted by other organizational units of the public prosecutor's office.

b) *Regional public prosecutor's office*. The main tasks of the regional public prosecutor's office include ensuring the participation of the public prosecutor in proceedings conducted pursuant to the Act before common courts and administrative courts, for example, voivodeship administrative courts, conducting and supervising preparatory proceedings in cases of prosecuting the most serious financial, economic, and fiscal crimes and against economic turnover in relation to property of great value, and supervising proceedings conducted in lower-level prosecutor's offices.

c) *District prosecutor's offices*. The main tasks of the district public prosecutor's office include ensuring the participation of the public prosecutor in proceedings conducted pursuant to the Act before common courts, in units in which military affairs departments have been established, and before military courts; conducting and supervising preparatory proceedings in cases involving serious criminal, financial, and fiscal crimes; and exercising supervision over proceedings in district public prosecutor's offices.

d) *Local prosecutor's offices*. The basic tasks of the local public prosecutor's office include ensuring the participation of a public prosecutor in proceedings before courts and conducting and supervising preparatory proceedings.

Police and other authorities such as the Border Guard, the Internal Security Agency, the National Revenue Administration, the Central Anticorruption Bureau, and the Military Police perform the role of bodies conducting preparatory proceedings under the supervision of a prosecutor in the form of an investigation or assisting a public prosecutor in conducting preparatory proceedings in the form of an investigation. Their main activities include checking, recording, and detection, that is, taking evidence.

The court is admittedly the main body of judicial proceedings but has some quite important competences at the stage of preparatory proceedings, including applying preventive measures and performing supervisory and control functions in relation to activities performed by the prosecutor and, for example, by the police during the preparatory proceedings.

Ad. Stage 2) The most important bodies of court proceedings include the following:

a) The court, which, at this stage, has a pivotal role. At the stage of court proceedings, the court plays the role of the main body that, based on the evidence and findings, determines the scope of criminal liability.

b) The Public Prosecutor, who, at the stage of court proceedings, acts as a public prosecutor and thus formulates, submits, and supports the indictment before the court.

Ad. Stage 3) The most important organs of enforcement proceedings are as follows:

a) Court of first instance. This is the court that issues the judgment at first instance. Its basic competences include, inter alia, referring a decision to execute, discontinuing or suspending execution, adjudicating on the seizure of a sentence, and matters relating to the execution of penalties: fines, restriction of liberty, and penal and protective measures. It also decides on the execution of the penalty of deprivation of liberty, including on postponement of its performance, conditional release from serving a sentence, granting a break in serving a sentence, and so on.

b) Penitentiary court. The district court always has jurisdiction over the place where the convict is staying. Their main competences include settling all issues related to the execution of the imprisonment sentence.

c) The president of the court or an authorized judge, who issues orders or takes decisions in matters that do not require issuing a decision in current matters related to enforcement proceedings.

d) The penitentiary judge, who participates in making procedural decisions related to, inter alia, the execution of a penalty of deprivation of liberty, temporary arrest, a precautionary measure consisting of placing an individual in a psychiatric institution and other means of isolation, and making certain decisions, for example, consenting to extend the duration of a disciplinary penalty in an isolation cell. They also have supervisory functions and thus make decisions regarding the supervision of the legality and correctness of the execution of penalties and measures related to the deprivation of liberty.

e) The court professional probation officer and head of the probation team of the court service. The main model of probation service functions on the basis of the Act on probation officers,³⁶ and in executive proceedings, their main tasks include ensuring the enforcement of the penalty of the restriction of liberty, carrying out activities related to organizing and controlling the execution of penalties with the use

³⁶ Journal of Laws 2001 No. 98, item 1071.

of electronic supervision or performing important tasks related to the performance of supervision in connection with the imposed measures consisting of subjecting the convict (perpetrator) to a sample (the so-called means of probation).

4. Main principles of substantive criminal law

The main principles of incurring criminal liability in Poland are contained in the Penal Code. This code consists of a) the general part, containing the basic regulations relevant to criminal law, such as the definition of the offense, types of crime, age of the perpetrator, catalog of penalties and penal measures, and so on, b) the detailed part, specifying particular types of offenses, and c) the military part, containing regulations relevant to soldiers incurring criminal liability.

Pursuant to the provisions of the Criminal Code, only those who commit an act prohibited under penalty of the statute in force at the time of its commission are subject to criminal liability. On the other hand, a prohibited act, the social harmfulness of which is negligible, is not a crime. The perpetrator of the prohibited act also has not committed a crime if the fault cannot be attributed to them at the time of the act.

The Polish Penal Code introduces the following classification of crimes, according to which the crime is a crime or a misdemeanor. The crime is a prohibited act punishable by imprisonment for not less than three years or a more severe penalty. A misdemeanor is a prohibited act subject to a fine of more than 30 daily rates or more than PLN 5,000, a penalty of restriction of liberty for more than one month, or a penalty of deprivation of liberty for more than one month.

Regarding the age capacity to be criminally liable, the Criminal Code clearly indicates that the person who commits an offense after the age of 17 is generally subject to criminal liability. Minors who, after the age of 15, commit extremely serious prohibited acts, such as assassination of the president or murder, may be liable as an adult in regard to the principles set out in this code if the circumstances of the case and the degree of development of the perpetrator as well as their properties and personal conditions support it and, in particular, if the previous educational or corrective measures were ineffective. Nevertheless, regarding a perpetrator who commits an offense after reaching the age of 17 but before the age of 18, the court uses educational, therapeutic, or corrective measures provided for minors rather than punishment if the circumstances of the case and the degree of development of the perpetrator, their properties, and their personal conditions call for such an approach.

The Polish Penal Code also provides for circumstances excluding criminal liability. These are the so-called counters. Among them, the most famous are the counter-types of necessary defense, which consist in the fact that those who, in necessary defense, fend off a direct, unlawful attack on any good protected by law have not committed a crime. If the limits of necessary defense are exceeded, in particular, when the perpetrator used a method of defense disproportionate to the danger of an

attack, the court may apply extraordinary mitigation of punishment and even withdraw from its imposition. Moreover, there is no penalty for anyone who exceeds the limits of self-defense, repels an attack consisting in breaking into an apartment, flat, house, or an adjacent fenced area, or repels an attack preceded by breaking into these places unless they have exceeded the limits of necessary defense in a significantly disproportionate manner. Those who exceed the limits of necessary defense under the influence of fear or agitation justified by the circumstances of the attack are not subject to punishment.

The second known counter-type is the state of higher necessity, according to which one who acts to remove an immediate danger to any good protected by law has not committed a crime if the danger cannot be otherwise avoided and the consecrated good is of lower value than the rescued good. Moreover, no one commits a crime who, while saving a good protected by law, sacrifices a good that does not obviously have a higher value than the saved good. If the boundaries of the state of necessity are exceeded, the court may apply extraordinary mitigation of punishment and even withdraw from its imposition.

The Penal Code contains a catalog of penalties. According to its provisions, the penalties are a fine, restriction of freedom, deprivation of liberty, 25 years imprisonment, and life imprisonment.

The detailed part of the Polish Criminal Code contains specific types of crimes. These include the following crime groups: 1) crimes against peace, humanity, and war crimes, 2) crimes against the Republic of Poland, 3) crimes against national defense, 4) crimes against life and health, 5) crimes against public safety, 6) crimes against safety in communication, 7) crimes against the environment, 8) crimes against freedom, 9) offenses against freedom of conscience and religion, 10) crimes against sexual freedom and decency, 11) crimes against family and care, 12) crimes against honor and bodily inviolability, 13) crimes against the rights of people performing paid work, 14) crimes against the activities of state institutions and local government, 15) crimes against the administration of justice, 16) crimes against elections and referendums, 17) crimes against public order, 18) offenses against the protection of information, 19) offenses against the credibility of documents, 20) crimes against property, 21) crimes against economic turnover and property interests in civil law turnover, and 22) crimes against trading in money and securities.

In the military part, general provisions on the criminal liability of soldiers and specific groups of crimes were specified, such as 1) offenses against the obligation to perform military service, 2) crimes against the rules of military discipline, 3) crimes against the rules of dealing with subordinates, 4) crimes against the rules of handling weapons and armed military equipment, 5) offenses against the principles of the performance of service, and 6) crimes against military property.

In the Polish criminal law system, it is also possible to use alternative dispute resolution (ADR), that is, to conduct proceedings without the participation of common courts with the help of independent third parties, namely an arbitrator or a mediator. In criminal matters, such an institution is mediation, which can be described as a

voluntary and confidential method of resolving disputes arising as a result of a crime through communication between the aggrieved party and the suspect/accused with the help of an impartial and neutral mediator.³⁷ Mediation can cover all crimes.³⁸ Most of the legal basis for mediation is provided by the provisions of the Criminal Code and the Code of Criminal Procedure as well as the Ordinance of the Minister of Justice of May 7, 2015, on mediation proceedings in criminal cases.³⁹

5. Main principles of formal criminal law (criminal procedure)

5.1. General principles and the purpose of criminal proceedings

The aims of Polish criminal proceedings are as follows: 1) to detect the perpetrator of the crime be detected and apply criminal liability as well as to ensure that an innocent person is not held responsible; 2) by the correct application of measures provided for in criminal law and the disclosure of the circumstances conducive to the commission of a crime, the tasks of criminal proceedings should be achieved not only in terms of combating crimes but also in terms of preventing them and strengthening respect for the law and the principles of social coexistence; 3) the legally protected interests of the aggrieved party are taken into account while respecting their dignity; 4) the case is resolved within a reasonable time.⁴⁰

There are 10 important rules of criminal procedure. The first is the *principle of truth*, which is regulated in the provision of Article 2 Paragraph 2 of the Code of Criminal Procedure, according to which all decisions should be based on true factual findings. The second is the *principle of participation in criminal proceedings of the social factor*, which, in Poland, refers to lay judges. This principle is regulated in Article 3 of the Code of Criminal Procedure and stipulates that, within the limits specified in the Act, criminal proceedings are conducted with the participation of the social factor. There are no jurors in Polish criminal proceedings. The third is the *principle of objectivity*, which is derived from Article 4 of the Code of Criminal Procedure, according to which the authorities conducting criminal proceedings are obliged to investigate and take into account circumstances both in favor of and against the accused. The fourth is the *principle of presumption of innocence* set out in Article 5 of the Code of Criminal Procedure, according to which the accused is presumed innocent until proven guilty and confirmed by a final sentence. Fifth, the *in dubio pro reo principle* is also set out in Article 5 of the Code of Criminal Procedure, according to which irremovable doubts are resolved in favor of the accused. The sixth is the *principle of the right to defense*, regulated in Article 6 of the Code of Criminal Procedure, according to which the accused has the right to a defense, including the right to use the help of a defense lawyer,

37 Sławicki, 2020, p. 26.

38 See Postępowanie mediacyjne w sprawach karnych.

39 Journal of Laws 2015, item 716.

40 Zagrodnik et al., 2019, p. 29.

about which they should be instructed. A defense counsel in criminal proceedings may be an advocate or a legal advisor. The seventh is *the principle of free evaluation of evidence*, regulated in Article 7 of the Code of Criminal Procedure, according to which the authorities of the procedure form their conviction based on all of the provided evidence, freely assessed, taking into account the principles of correct reasoning and indications of knowledge and life experience. The eighth is *the principle of ex officio operation*, as defined in Article 9 of the Code of Criminal Procedure, according to which procedural organs conduct the proceedings and perform acts ex officio unless the law makes them dependent on the request of a specific person, institution, or body or on the authorization of the authority. The parties and other directly affected persons may submit requests to perform activities that the authority may or is obliged to undertake ex officio. The ninth is *the principle of legalism*, indicated in Article 10 of the Code of Criminal Procedure, according to which the authority established to prosecute crimes is obliged to initiate and conduct preparatory proceedings, and the public prosecutor is obliged to bring and support charges for an act prosecuted ex officio. Except in cases stipulated in statutes or international law, no one may be released from liability for a committed crime; Finally, the 10th is *the principle of complaints*, as defined in Article 14 of the Code of Criminal Procedure, according to which the initiation of court proceedings takes place at the request of an authorized prosecutor or other authorized entity.

5.2. The stages of the criminal procedure (their role and main features)

Poland has a mixed-type criminal proceedings model. This means that some of the criminal proceedings in Poland are conducted as a process with elements of inquisitiveness (secret, mostly written, etc.); this is the first stage of criminal proceedings, referred to as preparatory proceedings. The second stage, known as court proceedings, is conducted as a trial with elements of an adversarial procedure (open form and, in most of the oral proceedings of the parties' pending litigation, before a judicial authority).

5.2.1. Preparatory proceedings

The main purposes of the pre-trial investigation are 1) determining whether a prohibited act has been committed and whether it constitutes a crime, 2) detection and, if necessary, apprehension of the perpetrator, 3) collecting personal identification data and data on a person's criminal record, 4) explanation of the circumstances of the case, including determination of aggrieved parties and the extent of the damage, and 5) collecting, securing, and, to the extent necessary, recording evidence for the court.

The preparatory proceedings distinguish between two phases: the stage of proceedings in the case (Latin: *in rem*), covering only the issuance of a decision to initiate preparatory proceedings without a specific indication of the suspect, and the phase against a specific person (Latin *in personam*), covering further steps, namely indicating a specific perpetrator of the crime, which is done by issuing an order on the

presentation of charges. The order to present the charges is issued if the data existing at the time of the initiation of the investigation or collected in its course sufficiently justify the suspicion that the act was committed by a specific person. The decision on presenting the charges contains the indication of the suspect as well as the precise description of the alleged offense and its legal qualification. The preparatory proceedings are divided into inquiry, which is the basic form of preparatory proceedings and is conducted in cases involving more serious offenses, and investigations, which are a simplified form of preparatory proceedings and are conducted for offenses of lesser severity. Therefore, the inquisition is conducted in the following cases: 1) in which the recognition in the first instance is within the competence of the regional court, 2) for offenses for which the suspect is a judge, a prosecutor, a police officer, or an officer with the Internal Security Agency, the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the State Protection Service, the Marshal's Guard, the Customs and Treasury Service, or the Central Anti-Corruption Bureau, 3) for offenses for which the suspect is an officer of the Border Guard, Military Gendarmerie, a financial body of a preparatory proceeding, or a body superior to a financial body of a preparatory proceeding in matters falling within the competence of these bodies or offenses committed by these officers in connection with the performance of official duties, 4) for offenses that are not under investigation, and 5) for offenses under investigation if the prosecutor so decides due to the importance or complexity of the case. The inquiry should be completed within three months. In justified cases, the inquiry period may be extended for a further period determined by the prosecutor supervising the inquiry or the prosecutor directly superior to the prosecutor conducting the inquiry but not for longer than one year. In particularly justified cases, the competent prosecutor superior to the prosecutor supervising or conducting the inquiry may extend its period for a further specified period. The prosecutor conducts the inquiry. However, they may entrust the police with carrying out the inquiry in full or to a certain extent or with performing individual steps. The investigation is conducted in cases involving offenses within the jurisdiction of a district court and punishable by a penalty not exceeding five years of imprisonment; however, in the case of offenses against property, this is only the case when the value of the subject of the crime or the damage caused or threatened does not exceed PLN 200,000 and for offenses such as burglary and fraud if the value of the subject of the crime or the damage caused or threatened does not exceed PLN 200,000. The investigation is typically carried out by the police unless it is conducted by the prosecutor. An investigation should be completed within two months. The public prosecutor may extend this period to three months and, in particularly justified cases, for a further specified period.

5.2.2. Court proceedings

Court proceedings are the culminating part of criminal proceedings. The leading authority here is the court, whose task is to determine, based on the evidence submitted to it, the final scope of the criminal liability of the accused.

The structure of courts in criminal proceedings is built on the principle of hierarchy and instance. The instance has control functions; for example, the judicial authority issuing a decision on the resolution of a conflict situation issues decisions in the first instance, while a party dissatisfied with this verdict has the opportunity to check/control the entire process, thus bringing appropriate appeals (e.g., a complaint/appeal). The two-instance procedure results from Article 176 of the Polish Constitution, according to which court proceedings have at least two instances. In Polish criminal proceedings, the appeal process that triggers the instance procedure in criminal cases is an appeal. This is referred to as an ordinary remedy against a still-not-final judgment. Specifically, it is provided based on the judgment of the court of first instance to the parties, and the deadline for bringing it is 14 days, which, for each entitled person, begins on the date of service of the judgment with justification. There are also extraordinary means of appeal in the Polish criminal procedure, which are measures of extraordinary control and are available as actions against final judgments. An example is a cassation appeal examined by the Supreme Court. The deadline for submitting a cassation appeal for the parties is 30 days from the date of delivery of the judgment with justification. An application for the service of a judgment with a statement of reasons should be submitted to the court that issued the judgment within the deadline of seven days from the date of delivery of the judgment.

Generally, courts in Poland are divided into *common courts*, which deal with common cases, and *special courts*, which deal with administrative and military matters. Criminal cases are included in common courts unless the case concerns a soldier, in which case they are handled by a military court. Generally, the basic act regulating the organization, system, and rules of functioning of common courts is the Act of July 27, 2001 – the Law on the System of Common Courts.⁴¹ Issues of jurisdiction and competence of courts in criminal matters are primarily regulated by the provisions of the Code of Criminal Procedure.

a) *Regional Courts* – As a rule, these are the first instance in criminal matters. The district court decides in the first instance in all cases except for those transferred by law to the jurisdiction of another court.

b) *District Courts* – As a rule, these are second instance to decisions of district courts, but the district court may also adjudicate in the first instance in cases enumerated in the Code of Criminal Procedure for the following crimes: crimes specified in the Penal Code and specific acts; certain offenses specified in the provisions of the Penal Code, such as Article 148 paragraph 4 of the Criminal Code – murder, Article 149 of the Criminal Code – infanticide, Article 158 paragraph 3 of the Penal Code – participation in a fight or battery, Article 258 of the Penal Code – participation in an organized group or a criminal association, and Article 299 of the Penal Code – money laundering of the Criminal Code.

41 Journal Of Laws 2001 No. 98, item 1070.

c) *Courts of Appeal* – These are courts that hear appeals against judgments and orders issued in the first instance in a regional court as well as other matters referred to them by an act.

At the top of the judiciary power in general – regardless of the type of case – is the Supreme Court, which is the supreme judicial body; it supervises the activity of courts in the scope of adjudication and performs other activities specified in the Constitution and acts. The activities of the Supreme Court do not include supervision over the administrative judiciary, which, in Poland, forms the system of special courts and consist of the Voivodship Administrative Court as the first instance and the Supreme Administrative Court as the second instance in administrative cases. Regarding criminal proceedings, however, the Supreme Court has a Criminal Chamber, the jurisdiction of which includes cases heard on the basis of the provisions of the Code of Criminal Procedure, the Fiscal Penal Code, the Code of Conduct in misdemeanor cases, and military penal cases.

5.3. Possibility of initial conviction in Polish criminal procedure

There are institutions in the Polish criminal procedure that assume a significant shortening of the conducting of criminal proceedings by considering and assessing the incurrance of criminal liability even before the final judgment is issued. This relates to situations in which institutions are applied that recognize the finding of, for example, guilt in committing a crime before the final judgment is issued.

The first institution is the so-called voluntary submission to criminal liability of the perpetrator. It is an institution from the Code of Criminal Procedure⁴², also known as a conviction without a trial. According to its assumptions, if the accused pleads guilty, and in the light of their explanations, the circumstances of the crime and guilt do not raise any doubts, and if the attitude of the accused indicates that the objectives of the proceedings will be achieved, further actions may be omitted. The prosecutor, rather than the bill of indictment, then requests that the court issue a conviction at the meeting and adjudicate penalties or other measures agreed to with the accused for the alleged offense, taking into account the legally protected interests of the victim as well.

The second institution is the institution of voluntary submission to punishment, also based on the Code of Criminal Procedure⁴³. The essence of this institution is that until the end of the first questioning of all of the accused at the main trial, the accused who was charged with an offense punishable by a penalty not exceeding 15 years of imprisonment may file a motion for a conviction and a specific penalty, measure, etc., without provision of evidence. The court may grant a conviction when the circumstances of the offense and guilt raise no doubts and the objectives of the proceedings will be achieved despite the fact that the trial has not been held in full.

42 Article 335.

43 Article 387.

The third institution is preventive measures. In a sense, the preliminary assessment of a prohibited act takes place with the use of preventive measures,⁴⁴ which are defined as measures that can be used to secure the proper course of the proceedings and, exceptionally, to prevent the accused from committing a new, serious crime.⁴⁵ They can only be used when the collected evidence shows a high probability that the accused committed the crime.⁴⁶ The most famous and controversial preventive measure is temporary arrest. In Polish criminal proceedings, pre-trial detention may be imposed only on the basis of a court order. Pre-trial detention is applied in preparatory proceedings at the request of the public prosecutor by the district court in the district of which the proceedings are conducted and, in urgent cases, also by another district court. The application for pre-trial detention mentions evidence indicating a high probability that the accused has committed a crime, the circumstances supporting the existence of threats to the proper course of the proceedings or the possibility of the accused committing a new, serious crime, and a specific basis for the application of this preventive measure and the need to apply it. Supervision over the correctness of detention and execution of preventive measures is exercised by the court and, in the preparatory proceedings, by the prosecutor as well. Pre-trial detention shall not apply if another preventive measure is sufficient. As a rule, pre-trial detention and other preventive measures may be applied if there is a well-founded fear of the accused's flight or hiding, especially when their identity cannot be established or they do not have a permanent residence in the country and there is a justified fear that they will be persuaded by someone to giving false testimony or explanations or obstruct criminal proceedings in any other unlawful way.

On the other hand, if the accused is accused of committing a crime or a misdemeanor punishable by a maximum term of imprisonment of at least eight years or if the court of first instance sentenced them to imprisonment for a term of not less than three years, the need to apply pre-trial detention to secure the proper course of the proceedings may be justified by the threat of severe punishment of the accused. A preventive measure may also be exceptionally applied when there is a well-founded fear that the accused, who has been charged with committing a crime or willful misconduct, will commit a crime against life, health, or public safety, especially when they have threatened to commit such a crime. On the other hand, if special considerations do not prevent it, pre-trial detention should be waived, especially when depriving the accused of liberty would cause a serious threat to the life or health or would have extremely severe consequences for them or their immediate family.

44 The catalog of preventive measures in the Polish Code of Criminal Procedure is as follows: temporary arrest, bail, social bail, police supervision, order for the accused to leave the flat, preventive measures under Article 276 of the Code of Criminal Procedure (suspension of official duties or refraining from a specific activity or from driving a specific type of vehicle or prohibition from applying for public contracts for the duration of the procedure), and prohibition from leaving the country.

45 Wielec, 2016, p. 51.

46 Wiliński, 2020, p. 367.

Pre-trial detention shall not be applied when, on the basis of the circumstances of the case, it can be foreseen that the court will impose a conditional suspension or a lighter imprisonment on the accused or that the period of pre-trial detention will exceed the estimated duration of the imprisonment sentence without conditional suspension. Pre-trial detention may not be applied if the offense is punishable by a term of imprisonment not exceeding one year. In the preparatory proceedings, the court, while applying pre-trial detention, sets its term for a period not longer than three months. If, due to the particular circumstances of the case, it was not possible to complete the preparatory proceedings within three months, at the request of the public prosecutor, the court of first instance competent to hear the case may extend the pre-trial detention, if necessary, for a period that may not exceed 12 months in total. The total period of pre-trial detention until the first sentence is issued by the court of first instance may not exceed two years.

5.4. Main features of executive criminal law

5.4.1. General principles and purpose of penitentiary law

The main principles of executive criminal law are a) *the rule of law*, which states that all bodies involved in enforcement proceedings are obliged to comply with the provisions of the law, that is, in principle, the provisions of the Executive Penal Code and implementing acts issued on its basis; b) *the principle of humanity and respect for human dignity*, which is expressed in the provision of Article 4 of the Code of Criminal Procedure, according to which penalties, punitive measures, compensatory measures, forfeiture, precautionary measures, and preventive measures are carried out in a humane manner, respecting the human dignity of the convict; Use of torture or inhuman or degrading treatment and punishment of the convicted person is prohibited, the convicted person retains civil rights and freedoms, and their limitation may only result from the act and from the final judgment issued on its basis; c) *the principle of cooperation with the society*, which results from Article 38 of the Code of Criminal Procedure, according to which associations, foundations, organizations, and institutions may cooperate in the implementation of penalties and penal, compensatory, protective, and preventive measures, in particular, those related to the deprivation of liberty, as well as churches and other religious associations and trustworthy people; d) *the principle of the sentenced person's subjectivity*, which is expressed directly in Article 5 of the Code of Criminal Procedure, according to which the convict is the subject of the rights and obligations specified in this code; e) *the principle of judicial control of extrajudicial bodies of enforcement proceedings*, resulting from Article 7 of the Code of Criminal Procedure, according to which a convicted person may appeal to the court against the decision of the body of enforcement proceedings on the grounds of its inconsistency with the law; f) *the principle of individualization* in the execution of penalties, according to which enforcement proceedings should be tailored to the individual requirements of a given convict in order to rehabilitate them; g) *the principle of social rehabilitation*, according to which executive proceedings should aim

at achieving the goals of social rehabilitation understood as a set of methods and principles of rehabilitation proceedings that take place in specific organizational conditions and the implementation of which is aimed at contributing to a change in the prisoner's personality in the area of their attitude, which, in turn, is aimed at preventing them from committing another crime by making an effort to re-adapt to and reintegrate into society.⁴⁷

When referring to penitentiary law, it should be noted that this is an area of law within executive criminal law, which consists of provisions specifying the rules for the implementation of isolation instruments applied to specific entities, such as imprisonment and temporary arrest. Penitentiary law is part of the penitentiary policy, which, in turn, "forms part of the state policy relating to the execution of the penalty of deprivation of liberty and other measures leading to deprivation of liberty as a legal reaction to the violation of the legal order."⁴⁸ In light of this, the objective of penitentiary law is to ensure the proper execution of imprisonment and pre-trial detention.

5.4.2. *The prison system in Poland*

The prison system in Poland includes the principles of operation and organization of prisons and types of systems for serving a sentence of imprisonment.⁴⁹ In Poland, prisons are subordinate to the Minister of Justice. The main legal act in this area is the Executive Penal Code. It introduces the following types of prisons in which imprisonment is imposed: juvenile prison; first-time-prisoner prison; prison for penitentiary recidivists; penal facility for military arrest.

Moreover, there are types of prisons such as the following: closed-type prisons; semi-open-type prisons; open-type prisons.

The indicated prisons differ in the degree of security, the isolation of convicts, and the resulting obligations and rights to movement inside and outside the establishment.⁵⁰

Convicts serve a sentence of imprisonment in these prisons in one of three systems:

- 1) Programmed impact, in which convicted adolescents as well as convicted adults serve their sentence, who, after being presented with a draft of the impact program, agree to participate in its development and implementation. The programs of impact specify the types of employment and education of convicts, their contact with their family and other relatives, their use of free time, the possibility of fulfilling their obligations, and other undertakings necessary to prepare them for their return to society.

47 Machel, 2003, p. 50.

48 Przesławski, 2018, p. 393.

49 Paweła, 2003, p. 199.

50 Hołda and Hołda, 2004, p. 97.

2) Therapeutic, which is for sentenced prisoners with non-psychotic mental disorders, including those convicted of crimes against sexual freedom and decency specified in the Penal Code, committed in connection with disorders of sexual preferences, mental handicap, and addiction to alcohol or other intoxicants or psychotropic substances, as well as physical disability requiring specialist intervention, especially psychological, medical, or rehabilitation care.

3) Ordinary, in which the convicted person may use employment, education, and cultural, educational, and sports activities available in the prison.

The Polish prison system also includes an electronic supervision system,⁵¹ which means that the execution of penalties, punitive measures, and precautionary measures may be carried out with the use of electronic supervision. The electronic supervision system is a set of procedures and technical measures used to perform electronic supervision. In this system, it is possible to control the presence of the convict on certain days of the week and the hours they spend in a place indicated by the court (stationary supervision); the current place of stay of the convict, regardless of where the convicted person is (mobile supervision); and the convicted person's maintaining a certain minimum distance from another person indicated by the court (proximity supervision).

5.4.3. Educational and reintegration tools and tools for rehabilitation

Among the tools aimed at the readaptation of the convict, work can be mentioned first.⁵² Recently, this element has been significantly exhibited in Poland. Among other things, a special program called "Work for Prisoners" is currently being implemented. This program was initiated by Deputy Minister of Justice Patryk Jaki in 2016 and implemented by the Prison Service with the aim of supporting broadly understood social re-adaptation of people in prisons and detention centers as well as their professional activation. The basis for the functioning of the program is composed of the provisions of the following legal acts: the Act of August 28, 1997, on the employment of persons deprived of liberty,⁵³ the Act of June 6, 1997, the Executive Penal Code,⁵⁴ the Regulation of the Minister of Justice of May 30, 2017, on the Fund for the Vocational Activation of Inmates and the Development of Prison Work Establishments,⁵⁵ and before that, the Ordinance of the Minister of Justice of January 23, 2012. The program includes three basic pillars that determine its activities: a) construction of production halls in prisons, b) extending the scope of the possibility of unpaid work by prisoners for local governments, and c) discounts for entrepreneurs employing prisoners.⁵⁶

51 Staśkiewicz, 2020, p. 45.

52 Wielec, 2004, p. 195.

53 Journal Of Laws of 2014, item 1116.

54 Journal Of Laws 1997 No. 90, item 557.

55 Journal Of Laws of 2017, item 1069.

56 See Program "Praca dla więźniów."

Another element is inmates' engagement in re-education activity. The main goal of prisons is educational. The achievement of this goal consists in arranging educational programs in such a way as to achieve effective readaptation of the convict and their safe return to society. This is ensured by appropriate prison staff, including in the form of prison educators, pedagogues, and psychologists.

A third element is the education of the inmate. Pursuant to Article 134 of the Code of Criminal Procedure, the Minister of Justice, in agreement with the minister competent for education and upbringing, has issued an ordinance specifying the manner and procedure for teaching in prisons and detention centers, the conditions and procedure for implementing the obligation to teach and for releasing prisoners from this obligation, and the procedure for paying fees for education outside the prison, taking into account the need to adapt the types and forms by which the convicted person obtains education and professional qualifications = to the conditions of the prison and remand prison, the specificity of teaching in conditions of prison isolation, and the need to ensure discipline and order during education.

6. Comparison with relevant EU documents and major international trends (with particular emphasis on elements of legislation or practices that may be criticized by experts)

Recently, globalization trends, understood as attempts to unify the laws of the Member States, can be found in European Union legislation. Nevertheless, it seems that at present, the introduction of a uniform criminal law or criminal procedure in the European Union countries is impossible for many reasons.

However, increasingly often, the European Union presents the main directions of legislative changes for the Member States. This is explained, among other things, by the fact that new types of crime are emerging that use integration, opening borders, and the free movement of people, capital, or goods. One such initiative is the protection of the witness and the victim in criminal proceedings. Due to doubts regarding concerns related to the effectiveness of providing protection to witnesses and victims in criminal proceedings, the idea emerged in the European Union to create legal acts that, if possible, re-create or improve the existing protection of such individuals. The main legal act in this matter is Directive 2012/29 / EU of the European Parliament and of the Council of October 25, 2012, establishing minimum standards on the rights, support, and protection of crime victims and replacing Council Framework Decision 2001/220 / JHA. The result of the introduction of the above-analyzed directive was Poland's adoption of a separate act organizing protection and assistance for the witness and the victim: the Act of November 28, 2014, on the protection of and assistance for the victim and the witness, which introduced new regulations to the Polish criminal procedure system in terms of the effectiveness and realism of protection for witnesses and victims in the Polish criminal

procedure.⁵⁷ The Act defines the principles, conditions, and scope of application of protection and assistance measures for victims and witnesses and their relatives if, in connection with pending or completed criminal proceedings with the participation of the victim or witness or penal fiscal proceedings involving the witness, there is a threat to the life or health of these individuals.

Another effect of European Union law on Polish criminal legislation is the introduction of the institution of the European Arrest Warrant into the provisions of the Code of Criminal Procedure.⁵⁸ This instrument was implemented in the Polish legal system on the basis of the Council Framework Decision of June 13, 2002, on the European arrest warrant and the surrender procedure between European Member States. It replaces the long extradition procedures formerly used by the Member States. The European arrest warrant was introduced into the Polish legal system by the Act of March 18, 2004, amending the Act – Penal Code, the Act – Code of Criminal Procedure, and the Act – Code of Petty Offenses.⁵⁹ Chapters 65a and 65b were added to the Code of Criminal Procedure, implementing the Framework Decision of the Council of the European Union of June 13, 2002, on the European arrest warrant and procedures for the transfer of persons between Member States.

7. Conclusions

When assessing the criminal law system from the perspective of individual historical periods, it must be acknowledged that the present form of this system is the result of broader political, social, economic, and cultural changes. It is often the case that events that took place at a specific time in Poland had a significant impact on the shaping of the current solutions in the area of criminal law. That is why, for example, the penal code of 1932, created in the period during which Poland regained independence after 123 years of partitions, as well as also other criminal law regulations contained solutions reflecting the trends, challenges, and specificity of the time period during which they were developed. The desire to take advantage of independence and to shape a new legal order in post-partition Poland caused, *inter alia*, the legendary Penal Code of 1932 to become a new, exceptionally efficient legal act in the criminal law system in Poland.

Completely different times after the war, that is, a period of subsequent historical, exceptionally bad events for Poland, especially the period of Stalinism and communism, influenced the formation of subsequent legal acts in the form of the Criminal Code of 1969. These were no longer legal acts that effectively balanced the arbitrariness of public authority with the guarantees and rights of the individual. The

57 Journal Of Laws of 2015, item 21.

58 Hofmański, 2008, p. 17.

59 Journal Of Laws of 2004, item 626.

construction of penal provisions in these acts was often used as a political tool rather than as an element of an efficient and fair penal policy of the state.

On the other hand, another change in historical conditions at the turn of the 90s resulted in further changes in the area of criminal law, as a result of which a new criminal code was introduced in 1997, which currently remains in force. It is already a legal act that states guarantees resulting from the democratic nature of the state. However, the change in the social and economic reality of the 1990s also forced an appropriate reaction of the state authorities. That is why numerous new institutions were introduced in response to ever new types of crime. An example is that the most frequently committed crimes in Poland today are the so-called financial (tax) crimes. The answer to this type of crime was the introduction of the aforementioned institution of extended confiscation into the criminal code.

The same applies to the provisions of the criminal procedure, which, *inter alia*, evolved to strengthen the role of the court in criminal proceedings. This is a positive direction because in a democratic state, the court appears as the only body deciding on the freedom of the individual. Therefore, the new Code of Criminal Procedure of 1997 rightly shifted the competence to apply, *inter alia*, pre-trial detention to a judicial authority, significantly limiting the powers of the prosecutor. On the other hand, as a response to ever new types of crime, especially those that appeared with the change of the Polish system in the 90s, there was an introduction to criminal proceedings, for example, the institution of a crown witness or an anonymous witness. Another trend influencing the shape of the provisions of the criminal procedure is the legislation of the European Union, which, *inter alia*, resulted in the introduction of the institution of the European Arrest Warrant into the Polish criminal law system as well as increased protection for witnesses and victims, as previously mentioned.

In summary, retrospection makes evident that historical factors, systemic changes, and social and economic changes that occur in the state cause and will result in a specific model of that state's criminal law system.

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