ROCZNIKI NAUK SPOŁECZNYCH
Tom 14(50), numer 1 – 2022
DOI: https://doi.org/10.18290/rns22501.6

KAROL BAJDA

THE INSTITUTION OF CROWN WITNESS IN THE LIGHT OF SELECTED RULES OF POLISH CRIMINAL PROCEDURE

A b s t r a c t . The trial institution of crown witness is an effective instrument in combating organized crime. It is one of the controversial institutions because it violates the leading principles of the Polish criminal procedure. In the article, the author confronts the institution of crown witness with selected principles of the Polish criminal trial. With the legality principle, the principle of equal rights for the parties to the criminal trial, the principle of free assessment of evidence, the objectivity principle and the fair trial principle. The aim of the article is to indicate the threats that the crown witness institution poses for the proper course of criminal proceedings. The perpetrator who appears in a criminal trial as a witness is an opportunistic exception in an extraordinary situation. It must be approached with utmost care and caution to ensure that the criminal trial is carried out in accordance with the law, remembering that it is a kind of compromise between the fairness of the trial and the institution's purpose—to combat organized crime.

Keywords: crown witness; principles underlying Polish criminal procedure; legalism principle; principle of equal rights for parties to criminal trial; principle of free evaluation of evidence; objectivity principle.

INTRODUCTION

The crown witness is a witness whose testimony has crucial importance for the proceedings in which he or she participates. The crown witness's role is somewhat reduced to their duties in the criminal trial (see more in Ocieczek, 2016), which is determined by Article 3(1) of the Crown Witness Act (hereinafter CWA), according to which evidence from their testimony can be admitted if the following two conditions are satisfied: "1) acting as a suspect until the indictment was brought to the court, in their testimony they [the crown witness] a) provided the authority conducting the proceedings with information that might help disclose the circumstances of the crime, detect other perpetrators, disclose or prevent further crimes, b) disclosed their assets and known to them assets of the

Dr. KAROL BAJDA—Assistant Professor, University of Rzeszów, Institute of Legal Studies, Laboratory of Criminology and Forensic Science; address for correspondence: ul. Rejtana 16C, 35-959 Rzeszów, Poland; e-mail: kbajda@ur.edu.pl; ORCID: https://orcid.org/0000-0002-3199-8294.

other perpetrators of the crime or the fiscal offence referred to in Article 1" (Journal of Laws [hereinafter Dz.U.] 2016, item 1197). The suspect must also undertake to "give comprehensive evidence before the court relating to the persons involved in the crime or the fiscal offence and other circumstances, referred to in point 1a, of committing the crime or the fiscal offence referred to in Article 1" (Dz.U., ibid.). Their role, therefore, is to break the conspiracy of silence in an organized group or gang focusing on committing crimes. The information provided to the law enforcement authorities by the crown witness leads to the trial and punishment of the perpetrators of crimes and prevention of other crimes. Their trial situation is determined by what they will say and what facts they will reveal.

The trial institution of crown witness is a compromise between the violation of the principles of substantive and procedural criminal law and the need to combat organized and corruption crime. Moreover, both supporters and opponents agree that it also violates certain constitutional principles. The voice of the doctrine concerns the constitutional principle of proportionality, equality before the law, the right to a fair trial and the right to defence (see more in Paprzycki, 2008). The proponents of the institution argue that these violations are justified by the need to fight effectively the most dangerous forms of crime, which are committed by organized groups and gangs aimed at committing crimes (Kościerzyński, 2007, pp. 60–61; see more in Pawelec, 2001; Pałafij, 2002).

Public support should be sought for lawful but controversial institutions, such as the crown witness. This will be possible when it is proved that the institution implements the values constituting its *ratio legis* (Paśkiewicz, 1999, p. 103; Kościerzyński, 2007, p. 77). Public support for the institution of crown witness, as for any other legal mechanism, should also be required in the lawmaking process. It is especially important to establish the axiological value at the beginning of this process.

1. THE PRINCIPLE OF LEGALISM

The Polish criminal law system is traditionally based on the principle of legalism. Following the definition formulated by Stanisław Waltoś, the principle of legalism is "a directive according to which the procedural authority appointed to prosecute crimes is obliged to initiate and conduct criminal proceedings upon becoming aware plausibly of a criminal offence prosecuted by public prosecution" (Waltoś, 2005, p. 286). It should be clearly stated that the criminal trial

is to be initiated, continued and ended with a legally valid decision if prosecution *ex officio* is legally permissible and justified (Kowalewska-Borys, 2004, p. 115). Procedural legalism is a consequence of the universal application of criminal law standards, giving rise to the obligation to prosecute criminals, and it is one of the aspects of the rule of law principle" (Waltoś, 2005, p. 287). The principle of legalism is dealt with in Article 10 of the Code of Criminal Procedure (hereinafter CCP) (Dz.U. 2021, item 534), which meets the social expectations of citizens' equality before the law.

The institution of crown witness breaks the principle of legalism by exempting the offender from criminal liability. It is an opportunistic exception. The reason for its introduction is an attempt to break the solidarity of organized crime groups in such a way that for the price of *exemption* from criminal liability (exclusion of the penalty application) for the perpetrator's alleged offence, some evidence could be obtained from them that will allow conviction of the other perpetrators involved in commission of such an offence (Brylak, 2008, p. 123). It is a type of *agreement* between the state in the person of the prosecutor and the criminal who, in exchange for the information provided on the criminal activity, receives from the court a conditional guarantee of release from the penalty (Ważny, 2013). Critics of the analysed institution claim that its operation leads directly to the disturbance of the most important constitutional principle of equality before the law (Dz.U. 1997, No. 78, item 483). It can be said that the crown witness goes against the expectations of citizens about their equal treatment. In contrast, there is a view that a society that is a set of individuals feels the effects of organized groups' and gangs' actions aimed at committing crimes for the combatting of which this institution has been established. The question that needs to be asked is whether an exception to the principle of equality before the law can be justified in order to improve the safety and protection of society? Does the purpose of the institution justify the opportunistic exception? If we strictly adhered to the principle of legalism, there would be no place for the crown witness institution in the Polish legislation. Legalism would uphold the procedural rules and at the same time prevent the effective protection of the society against dangerous criminals (see more in Murzynowski, Rogacka-Rzewnicka, 2002; Kudrelek, 2001). Supporters of the institution share the view that if we assume that members of criminal groups are capable of committing the most serious acts, including the crime of murder, and this is certainly the case, adding at the same time that human life is the highest value, then one should accept the departure from the principle of legalism, which is the opportunistic exception in the form of the crown witness. The

principle of legalism has a great deal of social significance. Analysing the dilemma concerning the crown witness institution in the light of this principle, the essence of the problem becomes apparent (Kowalewska-Borys, 2004, p. 116). Stanisław Waltoś emphasizes that "its essence is the conflict between the postulate of protection of society threatened by mafia activities of various origins and other forms of organized crime, and the defence of classical values and the principles of law and the criminal trial" (Waltoś, 1993, p. 13).

The violation of the legalism principle is indisputable. At the same time, it should be strongly emphasized that the functioning of the crown witness institution complies with the applicable law, as reflected by CCP Article 10(2): "With the exception of cases specified in the statute or international law, no one may be exempted from liability for a committed crime" (Dz.U. 2021, item 534). The regulation concerning the institution of the crown witness is contained in the Crown Witness Act of 25 June 1997. Therefore, the lawfulness of the institution in question is also beyond any dispute. The considerations of an axiological nature should be left to experts on the subject. Moreover, the Constitutional Tribunal states that the legislator has the discretion to pass a law which corresponds to the political and economic goals assumed by it (Judgment of the Constitutional Tribunal K 18/95). The selection of methods within the framework of criminal policy is therefore also its autonomous domain.

Opinions are divided in the doctrine. There are voices that in the case of such drastic violations of the law, any deviation from the principle of legalism is unacceptable. Derogation from the principle of ruthless prosecution of crimes which we encounter in connection with the institution of crown witness, according to its opponents, does not fall within the framework of sane opportunism. Not every example of an exception to legalism is opportunism. The circumstances are important and they should be used to decide the essence of the case each time. There is, however, an opinion that the institution of extraordinary mitigation of punishment, applicable and compatible with procedural legality, may limit the number of potential crown witnesses, even with the use of an extensive protection program. The very fact of having a criminal record for people who want to change radically their behaviour in the future may determine their negative decision regarding cooperation with law enforcement authorities. I am talking about pragmatic reasons, for example, related to the possibility of future employment and functioning in the society, for which the fact of having been punished is not irrelevant.

In conclusion, the crown witness institution is a kind of compromise between the fairness of the trial and the institution's goal. A fair trial is one consistent

with its guiding principles. The purpose of the institution in question meets social expectations. In light of the above, it should be stated that for the legislator introducing the institution of the crown witness into the legal system, the violation of the principle of legalism was justified by the "higher necessity status" to capture and punish ruthless criminals; criminals that threaten the life and health of the public—including citizens who are sceptical about this institution, also because of the legalism principle.

2. THE PRINCIPLE OF EQUAL RIGHTS FOR PARTIES TO THE TRIAL

The principle of equal rights for parties to the trial has not been expressed directly in the provisions of the Code of Criminal Procedure (see more in Bieńkowska, 2005, pp. 100–110). "Its specific shape results from all provisions defining the rights of the parties, and therefore from constitutional, treaty and procedural norms" (Kowalewska-Borys, 2004, p. 121). It should be considered that this principle requires that the trial should be carried out in such a way that the opposing parties have equal rights in terms of taking procedural steps and are treated equally. This rule is intended to guarantee the adversarial nature of criminal proceedings. The equal rights of the parties to the trial help to shape the objectivity of the procedural bodies in relation to the parties to the proceedings, and this in turn guarantees "facing each other" by the trial opponents in adversarial proceedings.

The procedural institution of the crown witness infringes on the principle of equal rights for parties to the trial on two planes. The first one is the privileged position of law enforcement and prosecution services in relation to the defence counsel for the other accomplices. The second plane is the confrontation of the position of the suspect, later the crown witness, with the victim who has directly felt the action effects of the criminal who has been rehabilitated by law.

The imbalance between the prosecution and the defence may take place at the initial stage of the trial, which is the preparatory proceedings. CCP Article 317(2) provides that "in a particularly justified case, the prosecutor may, by a decision, refuse to admit taking part in the activity by the accused due to the important interest of the investigation, or refuse to bring them to participate if they are deprived of liberty where this would cause serious difficulties" (Dz.U. 2021, item 534). It follows from that provision that the procedure of defence, which undoubtedly consists of participation in procedural acts, may be limited. More importantly, this restriction is imposed in the form of a decision

by the prosecutor, the counsel for the prosecution who confronts their arguments with the suspect, the future accused and their counsel. CCP Article 317(2) is an instrument that violates the principle of equal rights for the parties to the trial. CCP Article 325a provides, in turn, that "the provisions relating to the investigation shall apply accordingly to the interrogation, unless the provisions of this chapter provide otherwise" (Dz.U. 2021, item 534). Thus, it can be seen that this violation may take place in both forms of pre-trial proceedings—investigation and interrogation (Kowalewska-Borys, 2004, p. 123).

One can also venture a claim that the testimony of the crown witness in the main phase of the trial will have a considerable impact on the judge's decisions regarding the admission of evidence proposed by the defence lawyer. The conclusions of the defence in the light of the testimony of the repentant criminal may seem unfounded. Even the most objective judge realizes that obtaining the status of a crown witness is preceded by extensive explanations to law enforcement agencies and with a high degree of credibility. The same judge who adjudicates in a given case decides to admit evidence from the testimony of the crown witness. Therefore, a well-established judgment about the crown witness and their testimony may have an impact on the rejection of *inconvenient* conclusions of the defence that may distort their, even subconscious, versions of events. The Code of Criminal Procedure allows such a possibility. Pursuant to Article 170(1), "the application for evidence shall be dismissed if … 2) the circumstance to be proved is irrelevant to the outcome of the case or has already been proven in accordance with the applicant's claim; 3) the evidence is useless for establishing the given circumstances" (Dz.U. 2021, item 534). Therefore, a question should be asked about the consequences of using this code option where we are dealing with an extremely intellectually capable and clever criminal who has managed to deceive and exploit law enforcement agencies? CCP Article 170 may therefore lead indirectly to the violation of the principle of equality of the parties to proceedings and limit the possibility of defence.

A fair trial is required by the Constitution, statutes and the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6(1) of the European Convention (EC) states that "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal […]" (Dz.U. 1993, No. 61, item 284).

> Among other things, this article became the grounds of a complaint lodged in 1976 with the European Commission of Human Rights. The accomplice convicted in the trial with the participation of the crown witness alleged that admitting evidence from the testimony of another accomplice—the crown witness constituted a violation of EC Article 6(1). When examining the complaint in question, the Commission stated that

> indeed admitting evidence from the crown witness's testimony may sometimes affect the fairness of the trial, but the following safeguards were used in the analysed case: […]—the jury were also instructed on the immunity and knew about the personality of the crown witness, – the judge presiding over the case drew the jury's attention to the need to consider the credibility of the witness […], and the complaint, as unfounded, was declared inadmissible. (Kowalewska-Borys, 2004, pp. 121–122)

This example shows that the trial institution of crown witness is controversial and may have an impact on the rules and course of criminal proceedings. However, if the authorities conducting the proceedings exercise due diligence, their functioning is lawful and the very course of proceedings is correct.

The second plane of the imbalance issue concerning the equality of the parties to the proceedings is the position of the victim resulting from the crimes committed versus the crown witness. CWA Article 9(1) states: "The perpetrator is not subject to punishment for the crimes or fiscal offences specified in Article 1, in which they participated and which they disclosed as the crown witness in the manner specified by this Act" (Dz.U. 2016, item 1197). In connection with this article, a problem arises for the aggrieved party to pursue their claims in a civil procedure (see more in Bodio, Graliński, 2016). The phrase "is not subject to punishment" means that the enforcement of the rights of the aggrieved party is impossible. There are voices in the doctrine that the injured party's claim should be addressed to the State Treasury because it was the legislature that introduced the institution of the crown witness and, as a consequence, prevented the injured party from seeking their rights (see more in Adamczyk, 2011, p. 189ff).

The Crown Witness Act provides for the possibility of obliging the accused to redress the harm caused by the crime. CWA Article 3(2) provides that "the admission of evidence from the testimony of the crown witness may also be made conditional on the suspect's commitment to return the property benefits obtained from a crime or fiscal offence and to redress the damage caused by them" (Dz.U. 2016, item 1197). However, it is an optional condition for the accused to obtain the status of the crown witness. It belongs to the court examining the prosecutor's petition to determine the date and manner of performance of the said obligation if it deems the petition well-grounded. This is indicated by CWA Article 5(4).

It should be stated that the risk of violating the principle of equal rights of parties to the criminal proceedings is high each time the crown witness institution is used in the trial and during the procedure of petitioning to grant this status. Its observance is supervised by the judicial authorities, and their activity determines its actual presence in the criminal trial.

3. THE PRINCIPLE OF FREE EVALUATION OF EVIDENCE

The directive of free evaluation of evidence (see more in Pędziałek-Kunert, 2017) is formulated in CCP Article 7: "The procedural bodies base their conviction on the taken and freely evaluated evidence, considering the principles of correct reasoning and indications of knowledge and life experience" (Dz.U. 2021, item 534). It is clear from the article that the principle of free evaluation of evidence applies to all procedural bodies, both to the deciding panel, the prosecutor and other law enforcement agencies (police, the Internal Security Agency, etc.). When assessing the evidence, these authorities must only follow the rules mentioned in the article. This means that all forms of pressure and suggestion are unacceptable. The analysis of Article 7 gives rise to an obvious observation that the position of the procedural organs, i.e. the persons in the trial, cannot be overestimated. It is these people who decide about its further course at various stages of the proceedings. They evaluate the evidence and decide on the basis of the principles of correct reasoning, indications of knowledge and life experience. The legislator assumes that the procedural organs have the indicated competences. A question should be asked whether the preparation of all the persons (in the context of criminal trials concerning organized crime groups) who act as procedural organs ensures that the conditions set out in Article 7 are met. The issue is complex and goes beyond the scope of this article. It should be noted, however, that not all individuals have the same experience and the level of emotional stability necessary in case of the gravest matters (see more in Widacki, 2018, p. 92).

When using the crown witness institution, procedural authorities encounter difficulties in the form of the amount of evidence to be assessed and its quality. This may have an impact on the correctness of the final findings. Admitting evidence from the testimony of the crown witness in the proceedings is an exceptional situation. As a rule, the crown witness is used in the absence of other evidence of criminal activities of organized groups and gangs aimed at committing crimes. If the material collected in the preparatory proceedings is sufficient to formulate an indictment, trial and conviction of criminals, then the use of this institution is redundant.

The testimony of the crown witness is essentially about making explanations with defamatory allegations, so there is a problem how to evaluate them. The evidential value of what the accused says at the pre-trial stage and as a witness in the trial is questionable. It should be remembered that a repentant criminal will do everything to obtain the status of the crown witness and to avoid criminal

liability. They will often try to trick law enforcement agencies in a clever way, to colorize, to enhance the actual picture of the criminal activity with non-existent facts, and to change the roles of the characters active in it, etc. They will try to say what law enforcement agencies expect to hear. The procedural authorities may not be able to confront what the crown witness says with the actual course of events due to the lack of other evidence. So, if in the case of a standard trial, diligence must be exercised in assessing the evidence, then in the case of a trial involving the crown witness, the procedural bodies must do their best. The testimony of this witness should be thoroughly examined, and the interrogation activity should be repeated and then confronted with the previous one so that the prosecutor and the judge could come close to certainty about the truthfulness of the crown witness (bearing in mind, at the same time, that in a criminal trial we only operate with probability, never with certainty). The testimony of the crown witness, typically the only evidence of the prosecution (cf. judgments of the Supreme Court: II DSS 20/18; III KR 121/90; IV KR 136/79) has an impact on the conviction or acquittal of the defendants. The unwritten rule says that it is better to acquit ten guilty persons than to convict one innocent defendant. Therefore, extreme caution is obligatory. Jan Widacki emphasizes that the forensic practice obliges to be particularly critical when assessing testimonies and explanations provided by individuals who are obviously interested in furnishing extra (Widacki, 2018, p. 92).

In conclusion, the principle of free evaluation of evidence will meet its assumptions and have a positive impact on every criminal trial, in particular a trial involving the crown witness, provided that those applying it will be outstanding experts in the field relevant to the case, professionals with an appropriate level of knowledge, life experience and the ability to connect facts logically.

4. THE PRINCIPLE OF OBJECTIVITY

The objectivism directive was expressed in the Code of Criminal Procedure in Article 4: "Organs conducting criminal proceedings are obliged to investigate and take into account circumstances both in favour and against the accused" (Dz.U. 2021, item 534). It follows from the content of the article that procedural organs in their actions are to be guided only by what has been objectively established. Only an objective understanding of the case makes it possible to implement the most important principle of the criminal proceedings—the principle of material truth. The principle of objectivism postulates that the

procedural organs should not be focused on a certain decision from the very beginning of the trial. It is not about not establishing a version of events, but about a sober, emotionless assessment of the gathered evidence. This directive presupposes an impartial attitude towards the parties to the proceedings. However, this is not its only role. Stanisław Waltoś points out that "impartiality should not be equated with objectivity. Impartiality is the court's independence and absence of a preconception about the parties and other participants in the proceedings. Objectivity, on the other hand, is not only an independent and equal attitude towards each of the parties, and therefore the lack of a more favourable interest treatment of one of the parties. It is also the lack of a directional attitude to the matter itself and not prejudging its outcome. Objectivity is therefore a concept broader than impartiality" (Waltoś, 2005, p. 221). The problem of the objectivity principle was raised above all in the Constitution, which proves its seriousness. Article 45(1) of the Constitution of the Republic of Poland states: "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court" (Dz.U. 1997, No. 78, item 483). The text of the Constitution shows that the procedural objectivity shapes civic rights and freedoms, as well as security, and influences citizens' respect for the administration of justice.

When confronting the functioning of the institution of the crown witness with the indicated procedural principle, it should be stated that its stability may be affected. Already at the stage of preliminary proceedings, there is a risk of its violation. At this stage, law enforcement agencies bargain *semi-officially* with the repentant criminal. The prosecutor, when petitioning the court for the status of crown witness of the perpetrator, believes their explanations, often being in possession of only one piece of evidence. Therefore, at the very beginning of the criminal proceedings, their awareness of the acts of the co-accused is formed. They accept the version of the events presented by the repentant offender and expresses it in a petition to the court. The judge examining the petition decides whether to grant the status of a crown witness. If they find the accused's explanations true, and the statutory, formal and material conditions are met, they grant such a person the status of a crown witness. It should be emphasized that the social expectations of effective fight against organized crime are enormous. A spectacular success of breaking up an organization and punishing perpetrators of crimes operating in organized groups is extremely attractive for the justice system and may distort the objectivity of law enforcement agencies.

Therefore, there is a risk that the further course of the trial will be determined only by the accused's explanations, repeated in the form of testimony at the main hearing. "In this way, the '*vision*' of the crown witness becomes an inseparable element of every stage of the criminal proceedings" (Kowalewska-Borys, 2004, p. 125). Such a strong stimulus as the crown witness may influence the objective actions of all participants in the trial. Starting from the recording clerk, to an expert, and to end with the judging panel. Considering the fact that the trial in which the crown witness participates leads to the punishment of the most dangerous category of criminals, it can be assumed that the achieved result in the form of judging them will be achieved at the expense of the objectivity of the agencies and participants in the trial. Is it easy to be distanced from the words of a "trustworthy" (repentant) criminal who plays the leading role in the trial, nobly opening the eyes of the judiciary?

Taking the above into account, it should be stated that the crown witness may be dangerous for the criminal trial. The institution can achieve its primary goal, which is to know the truth. "The 'crown witness' constitutes a threat to the procedural principle of objectivity, and in this sense it can be said that, being conceived as an aid in the criminal prosecution, it may cause an omission of doubts and penal orders institutionalized and formalized in the Code of Criminal Procedure" (Kowalewska-Borys, 2004, p. 125).

CONCLUSIONS

It is a directive according to which the procedural authorities should conduct the proceedings fairly, with respect for the dignity of the participants in the trial and within a reasonable time (Waltoś, 2005, p. 325). The definition formulated by Waltoś shows that a fair trial is a reliable trial and, as a result, one that meets the chief criteria of criminal proceedings. The arguments cited above show that in the case of the crown witness institution, we may be dealing with their violation. It should be noted that the functioning of this institution does not break the rules, but only violates them or may lead to their violation. This does not mean, then, that the procedural institution of crown witness violates the general directive of a fair criminal trial.

The view of Waltoś should be shared, according to which "the procedural body should, last but not least, in the event of a conflict of procedural rules, always choose a solution that is more decent in its own conscience than in the eyes of outsiders" (Waltoś, 2005, p. 325). Bearing this in mind, and taking

the fact that the institution of the crown witness is a compromise between the fairness of the trial and the institution's purpose, it should be stated that everything that happens in a criminal trial with the participation of a crown witness is permissible, although it is often ethically questionable.

In conclusion, it should be pointed out that the institution of crown witness can be likened to a state of higher necessity, where the good saved in the form of human health and life and the condition of the economy is obviously higher than the sacrificed good.

REFERENCES

Literature

Adamczyk M., (2011), *Świadek koronny. Analiza prawno-kryminalistyczna*, Warszawa: C.H. Beck.

Bieńkowska B. T., (2005), *Równouprawnienie stron procesowych w systemie zasad polskiego procesu karnego*, Wojskowy Przegląd Prawniczy, No. 4.

Bodio J., Graliński W., (2016), *Znaczenie zasady równouprawnienia stron w procesie cywilnym*, Studia Iuridica Lublinensia, 25(1).

Brylak J., (2008), *Świadek koronny a zasady procesu karnego*, Palestra, No. 11–12.

Kościerzyński J., (2007), *Świadek koronny w świetle nowych regulacji*, Prokuratura i Prawo, No. 4.

Kowalewska-Borys E., (2004), *Świadek koronny w ujęciu dogmatycznym*, Kraków: Wolters Kluwer.

Kudrelek J., (2001), *Zasady legalizmu i ciągłości w polskim procesie karnym. Aspekty teoretyczno-praktyczne*, Przegląd Policyjny, No. 1.

Murzynowski A., Rogacka-Rzewnicka M., (2002), *Oportunizm ścigania przestępstw i jego granice w nowym kodeksie postępowania karnego*, [in:] A. Dębiński, A. Grześkowiak, K. Wiak (Eds.), *Ius et Lex. Księga jubileuszowa ku czci Profesora A. Strzembosza*, Lublin: Katolicki Uniwersytet Lubelski.

Ocieczek G., (2016), *Świadek koronny. Ocena wiarygodności*, Warszawa: Wyższa Szkoła Pedagogiczna.

Pałafij A., (2002), *Świadek koronny i wątpliwości (ani koronne, ani uzasadnione)*, Gazeta Sądowa, No. 40.

Paprzycki L. K., (2008), *Instytucja świadka koronnego i świadka incognito w świetle Konstytucji RP i Europejskiej Konwencji Praw Człowieka*, Palestra, No. 5–6.

Paśkiewicz J., (1999), *Aksjologiczne uzasadnienie instytucji świadka koronnego*, Biuletyn CE UW, No. 3–4.

Pawelec K., (2001), *Koronny świadek, koronne wątpliwości*, Gazeta Sądowa, No. 10.

Pędziałek-Kunert E., (2017), *Realizacja zasada swobodnej oceny dowodów w procesie cywilnym i procesie karnym w kontekście orzecznictwa Sądu Najwyższego*, Ius et Administratio, No. 2.

Waltoś S., (2005), *Proces karny. Zarys systemu*, Warszawa: LexisNexis.

Waltoś S., (1993), *Świadek koronny – obrzeża odpowiedzialności*, Państwo i Prawo, No. 2.

Ważny A. (ed.), (2013), *Ustawa o świadku koronnym. Komentarz*, LEX.

Widacki J., (2018), *Zarys kryminalistycznej problematyki przesłuchania*, [in:] J. Widacki (Ed.), *Kryminalistyka*, Warszawa: C.H. Beck.

Case law and legislation

Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950.

Judgment of the Supreme Court of 12 July 1979, IV KR 136/79, OSNKW 1979, issues 11–12, item 122.

Judgment of the Supreme Court of 23 July 1990, III KR 121/90, OSNMS 1991, issue 3, item 22.

Judgment of the Supreme Court of 25 April 2019, II DSS 20/18.

Judgment of the Constitutional Tribunal of 9 January 1996, K 18/95.

Constitution of the Republic of Poland of 2 April 1997, Journal of Laws, Dz.U. 1997, No. 78, item 483.

Crown Witness Act of 25 June 1997, Journal of Laws, Dz.U 2016, item 1197, consolidated text.

Act of 6 June 1997—The Code of Criminal Procedure, Journal of Laws, Dz.U. 2021, item 534, consolidated text.

INSTYTUCJA ŚWIADKA KORONNEGO W ŚWIETLE WYBRANYCH ZASAD POLSKIEJ PROCEDURY KARNEJ

Streszczenie

Instytucja procesowa świadka koronnego stanowi skuteczny instrument zwalczania przestępczości zorganizowanej. Należy ona do instytucji kontrowersyjnych ponieważ godzi w naczelne zasady polskiej procedury karnej. Autor w artykule konfrontuje instytucję świadka koronnego z wybranymi zasadami polskiego procesu karnego. Z zasadą legalizmu, zasadą równouprawnienia stron procesowych, zasadą swobodnej oceny dowodów, zasadą obiektywizmu i zasadą uczciwego procesu. Celem artykułu jest wskazanie zagrożeń jakie niesie instytucja świadka koronnego dla prawidłowego przebiegu procesu karnego. Osoba sprawcy, który pojawia się w procesie karnym w charakterze świadka jako oportunistyczny wyjątek stanowi sytuację ekstraordynaryjną. Należy podchodzić do niej z najwyższą starannością i ostrożnością by zagwarantować zgodny z prawem przebieg procesu karnego. Pamiętając jednocześnie, że stanowi ona swego rodzaju kompromis między rzetelnością procesu a celem instytucji – zwalczaniem przestępczości zorganizowanej.

Słowa kluczowe: świadek koronny; zasady polskiej procedury karnej; zasada legalizmu; zasada równouprawnienia stron procesowych; zasada swobodnej oceny dowodów; zasada obiektywizmu.