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Review Article

An Outline of the Model of the Interaction of Preparatory Proceedings and Court Proceedings in Criminal Procedure (Considerations against the Background of European Sytems of Criminal Procedure Law)

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Abstract

In this article the author focuses on the one of the primary research problems in the case of European systems of criminal procedure law (the shape of the mutual relations between preparatory and court proceedings, and in strict terms, the system of relations between groups of procedural facts that make up the indicated phases (stages) within the course of the proceeding). Bearing in mind the fact that the clarification of the relevant facts of the case is the prism of the general aim of criminal procedure and what goes with it, the settle criminal liability, Author shows relations between preparatory and court proceedings as a chain of functionally interconnected procedural facts. This article shows also the views expressed by the Authors of different systems of law, like: polish, german and French about the shape of the mutual relations between preparatory and court proceedings. The author also shows his own views within the scope of its subject.

Keywords: Criminal procedure, criminal liability, preparatory proceedings, court proceedings, procedural arrangements.

INTRODUCTION

Changes in the European systems of criminal procedure law that may be observed on the grounds of such systems throughout the last several decades are connected with the extension of the possibility of closing proceedings due to the inexpedience of criminal prosecution or the popularity of the possibility of the consensual resolution of disputes that result from committing a crime have led to a substantial transformation of the criminal procedure model. Nevertheless, there are still grounds for seeing the *sui generis* core of criminal procedure in preparatory proceedings and court proceedings that cover, examine and decide a case in the first instance court [1]. Looking at the above-mentioned stages through the prism of the general aim of criminal procedure enables them to be presented in the form of a chain of functionally interconnected procedural facts [2], which is a temporal sequence of events and procedural acts that lead to clarifying a case, and consequently, to settling the problem of the criminal liability of a person prosecuted against an act as charged (decisions on the subject matter of criminal procedure). Adopting this systemic optics allows a close relation that exists between preparatory proceedings and court proceedings to be realised and to treat these stages of criminal procedure as components of one dynamic system, to put it in terms of cybernetics [3].

Against the backdrop of these considerations a natural question then arises concerning the shape of the mutual relations between preparatory and court proceedings, and in strict terms, the system of relations between groups of procedural facts that make up the indicated phases (stages) within the course of the proceedings. Considering the fact that one should search for one of the fundamental factors that determines the model of preparatory proceedings and model of court proceedings in the system of such connections, and in a broader context, a model of the course of criminal procedure, it can be argued that the issue that is raised in the posed question constitutes the primary research problem in the area of criminal procedure kinetics (science on procedural motions) in the case of European systems of criminal procedure law.

Links between sets of procedural facts that make up the preparatory and court proceedings may be considered at different levels. At a general level there is a regularity according to which the first of the mentioned stages of criminal procedure, playing its

specific role[1] [4], determines the criminal procedure moving to the second stage [5]. This regularity is decided by an objectively imposed internal arrangement of criminal proceedings (criminal procedure structure) [6] in which preparatory proceedings constitute a procedural phase that precedes the court proceedings. At a lower level, one can consider more detailed relations between legal institutions or individual facts, which belong to a set of procedural facts that make up separate procedural stages. Among the entire constellation of possible relations between preparatory proceedings and court proceedings, one can indicate those which are of great importance for the development of a mutual relationship between these procedural stages because of the relevance found in the exemplary shape of the course of criminal procedure at these stages. On grounds of procedural kinematics for determining the arrangement of such relations, one can use the term of interaction (mutual relation) between preparatory proceedings and court proceedings [7]. Putting this idea in other words, one can say that the semantic scope of the term "interaction" in the aspect of criminal procedure kinematics covers the connections (influences) between preparatory proceedings and court proceedings, which find their expression in the way fundamental structural elements of these stages are formed (e.g. of the range of preparatory proceedings, forms of preparatory proceedings, models of court proceedings), and deciding the setting of the course of criminal procedure within their limits.

In the literature one can encounter a narrow approach to the research on the problem of the interaction between preparatory proceedings and court proceedings. A characteristic of this approach is seeing the essence of the indicated problem in the arrangement of mutual dependences that occur between the first phase of a criminal procedure and a barely separated stage of court proceedings, which is the main hearing [8], possibly a hearing preceding the main hearing, or in the questions – in fact even more narrowing the range of research – concerning the influence of the evidence taken during the preparatory proceedings on the content of a judgment passed during the main hearing or the court's review of the preparatory proceedings [9].

It should be noted that the presented limitation of the scope of research on the interaction of preparatory and court proceedings may not be contemporarily considered representative and sufficient for illustrating the mutual relations between the procedural stages indicated. This assertion will be fully clear if one takes into consideration the fact that even the theoretical conception that envisages the shape of the course of a criminal procedure on the basis of the mutual relation between the preparatory proceedings and the main hearing, which had numerous adherents and – which needs to be stressed – has found support in criminal procedure law systems, does not stick to the reality of the contemporary model of criminal procedure, in which along the main hearing, an alternative forum for the purpose of deciding issues of criminal liability in court proceedings is often envisaged.

The above-mentioned considerations allow it to be concluded that outlining the model of interaction between preparatory and court proceedings requires a research approach, in the framework of which the question of such an interaction in its comprehensive grasp is the main research problem that requires concentration on some cardinal laws that regulate the mutual relation between the procedural stages being discussed [10].

Determining the laws may be based on an analysis of the arrangement of the mutual relation between the preparatory and court proceedings that exit in a specific legal system. Thus, one can visualise the model-mapping (assertoric model) [11] of the interaction between the above-mentioned procedural stages. However, this study does not aim to map the structure of the phenomenon being studied in a concrete legal system, but to formulate an opinion on the cardinal laws that govern the arrangement of the mutual relation between preparatory proceedings and court proceedings that constitute a model-pattern (postulative model) of the interaction between these procedural stages that may be considered optimal in criminal procedure from a specific point of view. This viewpoint must be identified with the final property of the model-pattern, horizontal goal, and must be intended to be reached through its medium. There should not be any doubt raised by the claim that determining this goal requires a partly arbitrary decision. It is enough to note that there is no other way to do this than by means of expressing their own preferences that lead to putting before certain properties and values whose realisation is a given priority in the aspect of the shaping of the arrangement of the mutual relation between preparatory and court proceedings. The foregoing notes allow an idea to be put forward according to which in connection with the determination of the horizontal goal of the model of interaction between preparatory and court proceedings, one should resist the stronger contemporary tendency to look upon the course of criminal procedure at an angle of achieving the speed and economy of criminal procedure at any expense [12], which is quite often considered to be a primary indicator of change in criminal procedure law systems, which highlights the realisation an incomparably more important value in criminal procedure, which is material justice.

On the basis of this approach it can be argued that the cardinal laws that rule the system of mutual relations between preparatory and court proceedings should serve the purpose of setting a line of action for

this system that would lead to the achievement of procedural justice through ensuring the highest probability of the realisation of material justice within a criminal procedure [13]. It must be conceded that guaranteeing this probability must follow from subordinating the course of criminal procedure, including the system of the discussed relation, to the effective execution of an accurate reaction. The content of this rule in terms of the subject matter of the proceedings consists of two – to put it synthetically – directives according to which whoever commits a crime must take the liability they deserve by the law and that everybody who suffers from this crime must be guaranteed his legally protected interests are executed [14]. The above-mentioned ability, which is a praxeological category [15], plays the role of a criterion of selecting a method (a method of shaping the course of criminal procedure, including the mutual relation between the preparatory and court proceedings) and serving the purpose of the realisation of the accurate reaction principle in a criminal procedure, which assures the assumed (highest) degree of probability of achieving material justice [16].

Bearing in mind the above-discussed general regularity of mutual relations between preparatory proceedings and court proceedings, which result from the natural internal system of criminal procedure, it can be argued that the connections (influence) of the procedural facts belonging to the first of the mentioned stages with the procedural facts making up the course of criminal procedure at the other stage first of all lead along the path corresponding to the structural order of criminal procedure, i.e., from preparatory proceedings to court proceedings. Consequently, the main line of action of the system of connections that make up the interaction between preparatory proceedings and court proceedings is imposed through the structure of criminal procedure.

Against the background of the above, a brief outline of the conceptions of preparatory proceedings indicates two aspects in which one may consider the comparative value of the first stage of criminal procedure and court proceedings, namely deciding and clarifying a case. Authors who concentrate on the first aspect emphasise the functioning within the preparatory proceedings of legal mechanisms being an alternative to closing a criminal procedure during the main hearing, while others focus on establishing the degree of clarifying a case at this procedural stage (scope of preparatory proceedings). There are also positions that link the approaches described, in which the starting point is to bring out the difference between preparatory proceedings and court proceedings in terms of deciding a case, and next the focus is shifted and put on the assessment of the importance of these procedural stages through the prism of their impact on case clarification (recognition) [17].

There should be no doubt about saying that in contemporary criminal procedure the importance of preparatory proceedings and court proceedings in the aspect of deciding a case is assessed according to the resolution of the question of the admissibility of closing criminal proceedings at its preparatory stage where there are grounds for criminal prosecution and instigation of court proceedings as on the merits of the case. The indicated dependence does not, however, apply within the framework of the model of interaction of the above-mentioned stages of proceedings. What seems essential in this context may be grasped in the form of an ascertainment that the issue raised concerns, in principle, the admissibility of a procedural system in which the mutual relation between preparatory and court proceedings does not take effect due to the closing of criminal proceedings before they move on to the second stage. Thus, embarking on detailed considerations on the indicated issue, which would require referring to a wide range of problems concerning, among others, the concept of criminal prosecution, the scope of using legal measures that involve the abandonment of criminal prosecution for its inexpedience and thus, the possibility of using measures of government reaction to crime by non-judicial organs of preparatory proceedings (character and scope of powers of decision-making organs of criminal prosecution related to the closing of proceedings at the preparatory stage), would go beyond the topical framework of this study as indicated by the title. Restricting myself in the case of the outlined issues to references to separate studies in which they were subjected to thorough analysis [18], the impact of solution in respect of admissibility of the closing of criminal proceedings at the preparatory stage as an alternative to a decision made as a result of the main hearing on the reduction of incoming cases indicating the interaction between the above mentioned procedural stages should still be taken into account.

In light of the above notes, it should be indisputable that in the considerations on the construction of the model of interaction between preparatory proceedings and court proceedings, the establishment of cardinal laws regulating this interaction on the basis of comparative value of these procedural stages in the aspect of deciding a case requires a reference to a procedural system in which court proceedings are instigated, and consequently, the system of mutual relations following this construction is developed. Against the backdrop of such a system, the supremacy of court proceedings over preparatory proceedings in the scope of settling a case appears to be basically obvious. What determines this is the fact that the question of the criminal liability of a given person who is being prosecuted against an alleged act is decided at the procedural stage, thus finishing the operation of the system of mutual relations between preparatory proceedings and court proceedings. Thus, it can be argued that the objectively imposed, internal

order of this system determines the focus in the aspect of deciding a case in court proceedings.

From the point of view of guaranteeing the highest degree of the probability of achieving substantial justice in criminal procedure, it cannot escape our notice that the established focus of the system of mutual relations of preparatory proceedings and court proceedings means that it is the independent court that finally decides on the issue of the criminal liability of the accused as it is the organ that decides the course of criminal procedure at the indicated procedural stage. Bearing this in mind, it is worth noticing that in the case of some legal systems, e.g., Polish or German, it follows directly from constitutional regulations in which the lawmakers formulate a principle of the judicial administration of justice [19], providing no exceptions (see Article 176 of the Constitution of the Republic of Poland, Article 92 Grundgesetz fur die Bundesrepublik Deutschland) [20].

In view of the above observations, it is unsurprising to say that the shape of mutual relations between the discussed procedural stages largely depend on the influence of the course of criminal procedure at the preparatory stage of court proceedings. In principle this means that the primary importance in the aspect of the construction of the model of the interaction between preparatory and court proceedings has the construction of criminal procedure in its first phase. In the system of mutual connections under consideration here, the practical influence of court proceedings on the first stage of criminal procedure is, in a sense, of a retrospective nature and boils down to – in most general terms – the verification of the closed preparatory proceedings for its legality [21], grounds for hearing a case by the court and grounds for deciding the problem of the defendant's criminal liability [22]. The influence of the course of criminal procedure during court proceedings on shaping preparatory proceedings has gained greater importance in the framework of considerations on the development of an exemplary course of criminal procedure and a model of interaction between such procedural stages. In such a case, the reflection on the shape of criminal procedure in the first stage of proceedings must be accompanied by the adoption of a definite conception of court proceedings, including establishing the procedural significance of this stage of proceedings. This allows an arrangement of relations between preparatory proceedings and court proceedings to be set by looking at the preparatory proceedings from the angle of the indicated conception and considering their tasks and course in such a way that the verification of the results of the proceedings and review in the next procedural stage would follow the safest path towards the effective implementation of the principle of effective criminal justice response.

In the aspect of the problems mentioned in the title, it is necessary to emphasise the fact that the structure of the first stage of criminal procedure is of primary importance within the scope of the operation of the system of connections between preparatory proceedings and court proceedings, although it does not decide either the manner of shaping its course or the problem of the importance of this stage of the procedure from the point of view of assuring the highest probability of achieving substantial justice. What is extremely close to the issue that has just been raised is the problem of the procedural importance of court proceedings from the viewpoint indicated. Both issues make up the more general problem of the fundamental importance of the opinion on cardinal rights, which should provide the basis for the construction of the model of interaction between the preparatory proceedings and court proceedings. What is at the heart of this is balancing the relations between the preparatory proceedings and court proceedings on the basis of a comparative decision on the procedural significance (comparative evaluation) of such stages of criminal proceedings in the context of guaranteeing the highest probability of achieving substantial justice in criminal proceedings [23].

One determines a particular author's opinions indirectly on the basis of their ideas on the concept of preparatory proceedings with a focus on determining their scope and form as well as their basic function or aim [24]. As such ideas allow the fact that there are a variety of viewpoints on the issue of the importance of preparatory proceedings or court proceedings in criminal procedure to be realised. Therefore, it appears to be necessary, before arriving at the present author's own considerations, to quote some of the above-mentioned ideas to such an extent that they might be considered representative for the definite conceptions of preparatory proceedings.

It is worth starting the presentation of opinions on the concept of preparatory proceedings with a remark putting any further arguments in order and assuming the possibility of grasping them in the form of three basic lines of thought on the aim, function or scope of the first stage of criminal procedure.

The first of these threads comprises a whole group of opinions formulated on the basis of past discussions on criminal procedure reform that had evolved in the initial phase of the German code of criminal procedure. Among them it is worth mentioning the viewpoint taken by W. Kulemann, according to whom preparatory proceedings, being a „means" to an end understood as achieving justice [25], should lead to collecting proofs allowing the case to be explicated to such an extent as if the task directly following their closing was delivering a judgement [26]. Apart from the normative level, the quoted author supported the concept of criminal procedure in which preparatory proceedings would be a rehearsal for the general public, covering a comprehensive hearing of a case by means

of evidence and preceding the re-examination of all of the evidence allowing for the presentation of the factual state of the case in court proceedings [27].

In a similar vein the opinion presented by K. von Lilienthal, who at the height of criticisms of the solution involving limiting preparatory proceedings to collecting evidence sufficient to deciding whether to open court proceedings, approved of the proposition put forward by the Criminal Procedure Law Reform Committee, which was aimed at extending the preparatory proceedings by way of adopting a regulation according to which such proceedings would include explicating a case to such an extent to allow for court proceedings to be conducted. This author also noted that the importance of the proposed modification may possibly go further than the intentions behind it as it actually means legitimization of the *quod non est in actis non est in mundo* principle [28]. In the above-mentioned views, one may discern a reference to the position taken in the early 19th century by A. Feuerbach, who claimed that the purpose of preparatory proceedings ought to be finding proofs of the act, making it possible to justify the fair settlement of a dispute between the state and the defendant [29]. In the aspect of these considerations, it is of particular importance to note K von Lilienthal's ascertainment in which he expressed his belief that the acceptance of the Committee's legislative conception should be extended to its principal consequence, which was shifting the focus in the aspect of hearing a case from court proceedings to preparatory proceedings. According to the above-mentioned author, the overall hearing of a case in preparatory proceedings, guaranteeing a better preparation of a case to be heard during court proceedings, favours its correct decision at the said forum [30].

The same line of thought is represented in the viewpoints taken by A. von Kries from which a picture of the judge's activity when deciding a case emerges, the area that was previously occupied by the organs of preparatory proceedings allowing for establishing whether a crime was committed at all, who committed it and what were its circumstances [31]. This point of view requires extra concentration in order to avoid any ambiguity, especially in the aspect of the criterion adopted further for emphasising another group of views. Thus, it must be underlined that according to A. von Kries, evidence collected in preparatory proceedings that should allow for deciding whether there are grounds for pressing charges, does shape in this respect the basis of a judicial decision [32].

There is clear similarity between the above-quoted views and the position expressed in Polish mid-war literature by I.Kondratowicz, who claimed that what serves the purpose of realising the idea of the most effective administration of justice is taking the form of preparatory proceedings guaranteeing overall explication of the circumstances of a case and providing the evidence necessary for a court hearing [33].

In contemporary writings, this line of thought is best exemplified by the statement made by C. Roxin, who in recognising the present preparatory proceedings as the core of criminal procedure (*Kernstuck des Strafprozesses*), also emphasises that it actually denotes giving up the original lawmaking program according to which the leading role in terms of deciding a case in criminal procedure was to be played by court proceedings at the peak of criminal procedure. According to the quoted author, this high rank of preparatory proceedings is indicated by not only the wide range of possibilities of deciding about proceedings in its first stage but also the great influence that the results of actions conducted in preparatory proceedings have on the effect of court proceedings [34]. According to F. Riklin, diverting the contemporary criminal procedure towards closing criminal proceedings at its first stage results means that conducting the main hearing becomes in fact one of many procedural forms in which a case may be concluded in criminal procedure [35].

Turning now towards the assessment of the results of preparatory proceedings, it is worth noting the viewpoint presented on the grounds of French criminal procedure by J. Hodgson. According to this author, evidence collected during the first stage of a criminal procedure constitutes in fact a pillar of criminal procedure, a main source providing information which sets a point of view to be taken by the court while hearing a defendant [36]. The quoted opinion is parallel to the position taken by H. Wagner, who regarding preparatory proceedings as the central stage of the contemporary criminal procedure in terms of deciding a case, emphasises that examining evidence at this stage affects an evidentiary hearing in court proceedings, during which there is a kind of transformation of previously conducted evidentiary actions. In addition, he argues that wrong judgements result from not exhausting evidentiary possibilities during an investigation [37].

The second line of thought on the concept of preparatory proceedings includes the opinions of authors who hold on to the currently binding criminal procedure law or present their own vision of preparatory proceedings, which are separated from the normative level, and adopt an assumption according to which the tasks of this stage of criminal procedure in the aspect relating to hearing a case are exhausted on establishing the circumstances of a case to a degree that allows the prosecutor to decide whether there are grounds to press charges [38]. The above-mentioned assumption in fact means the recognition of the primacy of court proceedings (main hearing) over preparatory proceedings in the scope of deciding a case in criminal procedure.

As one of the adherents to the presented conception, E. Schmidt stresses that the main hearing should lead in an entirely independent way to the court deciding a case. Projections of the factual state of a case at this forum cannot be obscured or hindered by any preparatory proceedings actions, scarred by certain temporariness of approach [39]. The thread being discussed may also include the position by S. Waltos. Although as a consequence of the analysis of the goals of preparatory proceedings, the author defines the fundamental task in general terms, acceptable in any of the conceivable visions of the first stage of criminal procedure, assuming that it is "collecting and consolidating evidence for the use of the future main hearing", at the same time at another point in his monograph, he makes an unambiguous conclusion that we must strive at ensuring a court hearing is given the role of main proceedings in criminal procedure [40].

The third stream gathers viewpoints that reflect the model look at preparatory proceedings and court proceedings, which may be considered an original way of reconciling visions of criminal procedure that are characteristic of the above-presented lines of thought. The main feature of this stream is the assumed equality of both of the indicated stages in the aspect of deciding a case in criminal procedure, which is accompanied by emphasis put on the fact that they are in fact mutual elements of the whole that they make up due to the common guiding theme, aim (*Teile einer aufeinander bezogenen Sinneinheit*) [41]. What is essential for the argumentation supporting the presented approach is focusing on the emancipation of criminal procedure ensuing in the normative domain *in genere* from the idea of collecting evidence in secret [42], which is driven by the need to increase the guarantee of standards, resulting from legal solutions adopted at a constitutional level in democratic states ruled by law as well as from the provisions of the European Convention on the Protection of Human Rights and Fundamental Freedoms [43]. The challenge within the presented conception of the possibilities of regarding respectively the preparatory proceedings or the main hearing as the core or peak of criminal procedure inspires one to note, incidentally, the critical view expressed by B. Schunemann. According to this author, the above-mentioned stages of criminal procedure may be compared to a specific pulp of genres that causes the silencing of the leading role of the main hearing in criminal procedure. Diminishing the role of the main hearing in this way in the reality of contemporary German criminal procedure results primarily from the mosaic structure of preparatory proceedings, which means that criminal procedure appears to be abundant with small individual steps that are deprived of an Archimedean point. According to B. Schunemann, this structure is decided among others by mingling opportunistic legal solutions with subordinating criminal prosecution to the principle of legalism, diminishing the prevailing role of an organ of prosecution in respect of criminal prosecution in preparatory proceedings as a result of extending the scope of powers vested in the police in this respect or eventually enhancing the possibilities of using modern coercive measures and investigative techniques, which, in the sphere of combating crime, consolidates joining into one network the "retaliatory" criminal prosecution and the preventive and investigative actions taken by the police [44].

Sometimes directly attributing a view by a given author to any of the above-presented lines of thought encounters some difficulty as is best exemplified by A. Murzynowski's opinions. Considering his postulate of the versatile and accurate manner of conducting investigation [45], one may try to position his viewpoints in the framework of the first line of thought on the conception of preparatory proceedings. However, this classification may raise doubts if we take into consideration the proposition of the quoted author „to grant the main hearing a much higher rank and greater importance in relation to preparatory proceedings; so that it would not be – as it used to be – largely a simple repetition of the results of that preliminary stage of criminal procedure, conducted in camera and in the adversarial system" [46]. Presumably, the quoted opinions are an expression of a certain evolution of A.Murzynowski's views, which led him to formulate the argument that should undoubtedly be attributed to the second group of opinions, i.e., preparatory proceedings „(…) should not replace the main hearing in a thorough examination of the evidence which the court is to draw upon when sentencing. This preliminary stage of criminal procedure must only serve the purpose of checking whether there are grounds for lodging an indictment with the court and what type of crime the alleged offender is to be charged with and reporting to the court any proofs so that the court could after their examination deliver an appropriate judgement" [47].

Other reasons make it necessary to quote separately the view that was once presented by L. Schaff. What matters in this case is the fact that despite the passage of five decades since the time he formulated the opinion, it has been an effect of the most complete rendering in Polish literature of the confrontation of preparatory proceedings and court proceedings in terms of their importance in the aspect of deciding a case in criminal procedure. It should be noted that in the case of its theoretical value, it would be difficult to talk about being contaminated by the social and political conditions under which it was presented. The essential reflection accompanying the analysis conducted by L.Schaff is contained in the ascertainment that despite the tendency to provide a merit-related advantage to the court hearing and to reduce the first stage to a solely preparatory role, it is in fact the preparatory proceedings that considerably affects criminal

procedure, and even decides their results [48]. This is decided – according to the quoted author – by not so infrequent cases of the supremacy of preparatory proceedings over court proceedings resulting from the transformation of the hearing by the first instance court – against the principles of immediacy, adversarialism and objective truth – into reading investigation files distorting the correct course of proceedings or due to the limitation of evidentiary proceedings during a hearing into the verification of actual findings made during preparatory proceedings [49]. Presenting the criticisms of the described phenomena, L. Schaff came up with a solution according to which preparatory proceedings would serve the purpose of „eliminating cases which are immature for merit-related recognition (negative decisions) on the one hand, and on the other hand collecting evidence for the prosecutor, which enables him to formulate charges precisely and with higher probability, and thus makes it possible for him to draft an indictment and instigate court proceedings". Consequently, according to L. Schaff, within the framework of the first stage of criminal procedure a court hearing would be prepared „only in the sense that there is collected material which justifies its instigation and conducting" [50]. Thus, the quoted author hinted quite clearly that the key role in the aspect of deciding a case should be played by court proceedings.

The present considerations have allowed the fundamental law ruling the relation between preparatory proceedings and court proceedings in the aspect of settling a case to be established. Much more problematic is making similar assertions and balancing the relation between preparatory proceedings and court proceedings on the basis of a comparative verdict on the procedural significance (comparative estimation) of these stages of criminal proceedings in the aspect of case clarification.

Since part of the considerations on the model of interaction of preparatory proceedings and court proceedings dealing with the comparative value of both stages in the aspect of case clarification requires basically responding to the issue that can be posed as the following question: in this particular aspect in the scope determining the binding settlement of a legal dispute by the court, should the leading role be attributed to the evidentiary actions conducted during preparatory proceedings or should it be reserved for the examination of evidence directly before an independent court in court proceedings? Assuming another optics, the issue raised is expressed in the form of the question: do preparatory proceedings serve the prosecutor only or are they intended to provide evidence to the court that would be able to rely on it when deciding on the object of a trial, or at least are they aimed at preparing evidence for both the prosecutor and the court? [51].

Based on the opinions quoted in the second part of this study concerning the exemplary shaping of preparatory proceedings one can propose the distinction of two totally different conceptions on the assessment of preparatory proceedings and court proceedings in terms of their importance in the aspect of case clarification. The former involves the supremacy of preparatory proceedings over court proceedings, whereas the latter envisages the predominance of court proceedings in the scope of case clarification in criminal procedure [52]. Now, in order to present the strengths and weaknesses of both of the outlined conceptions, it should be stressed that it is not about giving the detailed characteristics of each solution as this does not seem necessary for the purpose of these considerations, especially as in this respect there are still valid in-depth analyses that were conducted by other authors earlier [53], but what matters is concentrating on some principal consequences resulting from the adoption of either of these conceptions. Pointing to these consequences determines the authoritative assessment in the scope of the comparative value of preparatory proceedings and court proceedings in the aspect of case clarification.

When discussing the advantages of the first conception, it is worth starting by quoting the view of L. Schaff, who was one of its opponents. He believed that recognising the supremacy of preparatory proceedings over court proceedings in the aspect of case clarification, emphasising its exhaustive clarification in the first stage of criminal proceedings, favours the implementation of the postulates according to which the innocent is not to be taken to court, whereas the guilty is not to avoid legal liability for the committed unlawful act [54]. According to A. Murzynowski, the comprehensive clarification of a case in the first stage of criminal proceedings serves the purpose of the thorough preparation of an effective indictment and contributes to the situation when „in law courts there are delivered few sentences of acquittal or sentences which discontinue criminal proceedings" [55]. In the context of the above quoted opinion, it is necessary to note that the tasks of preparatory proceedings are seen not only as tasks aimed at establishing the grounds for instigating court proceedings or facilitating the implementation of the function of pressing charges before the court [56] or preparing the realisation of the objectives of the main hearing [57] or finally ensuring an efficient course of the main hearing without – bearing the mark of inquisitorialism – activating the court in the scope of admitting evidence [58], but also taken into consideration are the precisely demarcated limits of criminal complaint which instigates – according to the principle of accusatorial procedure – court proceedings, or the limits of the recognition of a case by the court [59]. Naturally, fulfiling this task requires the initial adoption of a research horizon that covers a wide range of possibilities regarding the factual and legal assessment of an event being studied in criminal proceedings, which can only be narrowed down to the factual and legal analysis of a definite

unlawful act committed by a given person as a result of consecutive procedural actions. Against this background, one can emphasise the significance and benefits brought by preparatory proceedings [60].

The indisputable strengths of the comprehensive clarification of a case in the first stage of criminal proceedings includes the possibility of collecting all of the evidence in the shortest time possible after the crime was committed, when proofs in the case have not yet been expunged as a result of the process of forgetting, in terms of memory traces or, for example, have not yet been damaged, in terms of other traces related to the properties of a human body or a location [61]. Considering the evidentiary difficulties resulting from the passage of a longer period of time after a crime was committed, the importance of complete collection and, what cannot escape our attention, the importance of the complete collection and safeguarding of evidence during preparatory proceedings for the purpose of providing the court with the possibility of using it when establishing the facts of the case being the grounds for deciding on the object of a trial. In this context, it is underlined that the growing significance of criminalistics in criminal procedure, which require a suitable technical and organisational background that the organs of criminal prosecution have at their disposal naturally determines the existence of more beneficial conditions for looking for proofs, and thus getting to the substantial truth in preparatory proceedings in comparison with court proceedings [62].

The main objection raised against the conception discussed concerns the danger that appears against its background of reducing the role of the court adjudicating during a hearing „on reviewing the correctness of findings made during preparatory proceedings" [63]. Within this scope it is of key importance to notice that the complete collection and preservation of evidence in preparatory proceedings, in fact, creates the grounds upon which the adjudicating court may base their own insight into the case. It seems necessary to stress the fact that the resultant danger for the realisation in criminal procedure of directives expressing the principle of immediacy, the principle of adversarialism or finally – taking a broader look – for the realisation of substantial justice in criminal procedure, does not refer only to a situation in which the court „transforms the hearing into reading out the files and thus distorts the course of proceedings" [64], but also concerns the very possibility of the court familiarising itself with all of the evidence contained in the files of preparatory proceedings [65]. Although the indicated danger is quite obvious when it stems from using evidence collected in the first stage of criminal proceedings during court proceedings, it is necessary to add an extra comment of whether such a danger is related to the unlimited access of the adjudicating court to the files of preparatory proceedings.

Within the scope concerning the issue indicated at the end of the previous paragraph, it is worth quoting a view once expressed in Polish literature by S. Waltos. He believed that providing the adjudicating court with the totally unlimited possibility of studying the files of preparatory proceedings, including – notably – evidence which it would not be able to use as the factual basis of its judgement, e.g., due to obtaining a proof in investigation or inquiry with breach of inadmissibility in evidence [66], leads in fact to eradicating the guarantee of the court's direct encounter with evidence during the main hearing, as the "judge will always be influenced by the investigation or inquiry files" [67]. What seems to be most important from the point of view of the highest degree of probability of achieving substantial justice in the framework of the model of interaction of preparatory proceedings and court proceedings is related to the emphasis that is placed on the fact that this possibility raises the danger of the adjudicating court identifying itself with the version of the event presented in the files of preparatory proceedings. This is followed by a fear about the adjudicating court losing its perspective of an impartial arbitrator for a position in which it would echo the prosecutor [68] and – quite frequently without waiting for his initiative – steer the proceedings in such a direction so that it would lead to an event reconstruction in relation to which criminal proceedings are conducted that would match the image shaped under the influence of the content of the files of preparatory proceedings [69]. It seems obvious that the consequence of the adjudicating court adopting the attitude discussed, which consists in the defendant facing *de facto* an additional prosecutor [70], would denote the undermining of the principle of adversarialism and the principle of the right to a defence, the enforcement of which is what the contemporary systems of criminal procedure law are subjected to in democratic states that are ruled by the law. In the context of the possibility of the court acting under the influence of the files of the preparatory proceedings, it needs to be stressed that contrary to the arguments that are sometimes raised [71], the cognitive perspective set in the indicated files may, instead of enabling the court to achieve the substantial truth, basically narrow the mental horizon, thus posing a considerable threat to making the substantial justice real in terms of criminal procedure.

The foregoing remarks are sufficient to realise the threat to the court's jurisdictional independence and discretional appraisal of evidence [72], which is observed in the possibility of the adjudicating court's familiarising itself with the files of the preparatory proceedings. At this point, it must be stressed that the fear connected with the possibility of the court being influenced by the image that has been created as part of the prosecution [73] is hard to ignore judging from the strong support it enjoys in human psychological dispositions, which cover one's willingness to adopt a method of acting which *prima facie* promises a greater

opportunity for succeeding and additionally tends to undergo most frequently a practical verification even when one sees that from a definite point of view (for example from the point of view of impartiality or more broadly the correct administration of justice) the action taken means worse chances [74]. The fact that the dispositions indicated show in the judicial environment is best proved by the research recently conducted in Poland concerning the origins of wrongful convictions [75].

Indicating the weaknesses of the concept supporting the comprehensive clarification of a case in preparatory proceedings, one may not totally let the idea that a thorough examination of a case in the first stage of the procedure naturally leads to extension of time span between the event in relation to which the criminal proceedings are conducted and the court proceedings, which enhances the danger of time affecting the evidence dealt with by the adjudicating court losing its original properties determining its cognitive value, disappear from sight [76]. It should not escape our notice that in practical terms the realisation of the above-characterised conception often results in an unnecessary extension of evidentiary proceedings in the framework of the first stage of criminal procedure „even when applying custody towards the accused" [77], which is often the case when evidentiary actions are taken that happen to be useless from the point of view of a settlement on the subject matter of the determination on the subject matter of the procedure [78].

Proceeding now to discussing the other presented conceptions, one can approve of the assessment previously made by S. Waltos, according to which „the ideal criminal procedure would be a system in which one could do without preparatory proceedings in general"; however, in contemporary reality the model of criminal procedure that refers to this ideal would be deprived of its practical value [79]. This is best indicated by the benefits presented above from a wide range of possibilities in the scope of searching, securing and recording evidence in preparatory proceedings, „which create even a necessity for such a stage" [80], as well as the dangers related to a solution involving the supremacy of court proceedings in criminal procedure in the aspect of clarifying a case, which will be discussed further in the following considerations. The conception that involves the fundamental role of court proceedings in criminal procedure in the aspect of clarifying a case is reflected profoundly in the form of the assumption according to which preparatory proceedings should serve, on the one hand, the purpose of eliminating cases that are not mature enough to be decided on merits, and on the other hand, the purpose of collecting evidence for the prosecutor's "use" that merely justifies the instigation and carrying out of court proceedings [81].

Despite the disputes and controversies between particular authors regarding first of all the question of the use of evidence collected during preparatory proceedings to be used as evidentiary grounds for the judgement, a strong conviction has been maintained among the advocates for the analysed conception that its main advantage is ensuring the court has direct access to the evidence and thus is provided with optimal conditions for making an assessment since it is the organ that is vested with the exclusive competence to make a binding decision of a legal dispute in criminal procedure [82]. Emphasising the primary importance of the benefits described, it is worth underlining separately the importance of establishing the facts that correspond with the substantial truth and thus increasing the probability of realising substantial justice in criminal procedure, in particular in cases that are complicated in factual or legal terms, or in both, is safeguarded by way of the analysed conception of grounds under which there might occur the real development of a legal dispute before an independent court in open court proceedings. What must not disappear from sight is the aspect of the issue discussed, which is connected with the correct outlining of the framework of evidentiary proceedings through ensuring that they are completed by means of such evidentiary actions that are important for the court's clarification of a case and thus avoiding unnecessary actions. In this respect, it is essential that nobody can judge whether all of the significant circumstances in terms of settlement of a legal dispute have been clarified or whether it is necessary to conduct further proofs better than the organ that bears the burden of making such a decision. Moreover, in the literature it is stressed that publicly conducting evidence before the court serves the purpose of minimising the risk of a possible, illegal influence on particular proofs [83]. For the bigger picture, it must also be added that on the grounds of the concept that involves the supremacy of court proceedings in criminal procedure in the aspect of case clarification, circumstances that decide the weaknesses of the first conception under consideration are marginalised.

Revealing the other side of the problem allows one to observe that what lies behind the analysed conception is serious threat to the court establishing the facts that correspond with the substantial truth and the concentration of a court trial. It is sufficient to consider the court's limited investigative possibilities and capacity in order to realise that it may turn out that the time saved in the first stage of a criminal procedure as a result of rapidly taking a case to court may be wasted due to evidentiary difficulties and even more so as a result of repeated breaks during court hearings that necessitated by the prosecutor's need to search for further proofs that confirm the indictment claim. Giving up the idea of comprehensive clarification of a case in preparatory proceedings as part of the conceptual solution under consideration may therefore give rise to the danger of interfering with the effective course and

extension of criminal procedure in the court proceedings stage. Naturally, this is related to a fear that the evidence presented by the prosecutor and examined for the first time during court proceedings will not lead to the case establishments he predicted. In extreme circumstances, this may result in challenging the idea that involves the aim of criminal procedure to realise substantial justice in a criminal procedure, in relation to the necessity of acquitting the defendant as liable for crimes due to the lack of evidence on which the court could base its conviction and the fact that such a lack was not removed throughout the court proceedings [84]. Additionally, it must be noted that the assumption of the court's active part in evidentiary proceedings that is frequently raised in the analysed conception leads to the petrifying of the symptoms of prosecuting (inquisitorialism) in a criminal procedure [85]. Practically, this assumption proves to be the cause of a disproportion between the hyperactivity of the president and the court in the course of evidentiary proceedings during court proceedings and the passivity of the counsel of the prosecution as well as defence, which challenges the actual legal dispute before an independent court.

As a result of the comparison of the conceptions analysed above that were made as part of model considerations concerning the course of a criminal procedure, especially in its first stage, the idea of supremacy of court proceedings in the aspect of clarifying a case in criminal procedure is gaining the widest recognition. Its embodiment in the form of concrete proposals for solutions is accompanied by an attempt to adapt some legal constructs that feature a contrary conception, e.g., one that is connected with using evidence conducted in the first stage of criminal procedure functioning as evidentiary grounds for the judgement or setting up a wide range of preparatory proceedings that are held in the form of an investigation. Commenting on the theoretical constructs that are built on the foundation presented, one can only say, without going into details at this point, that either they promoted solutions that could not stand the test of reality and the idea of realisation of substantial justice in criminal procedure [86], or they led to at a lower level to the creation of a kind of enclave where the conception based on the opposite assumptions would have a legitimate position [87].

In the context of the problems discussed, it is of note that on the grounds of the constructs indicated, there is a more or less clearly involved competitiveness of the conceptions presented above on the assessment of preparatory proceedings and court proceedings in terms of their significance in the aspect of case clarification. This tends to lead – on the level of fundamental assumptions concerning the model of preparatory proceedings or the entire criminal procedure – to supporting one of these conceptions and rejecting the opposite one. Consequently, one can observe that the general reflection on the focus of case clarification in a criminal procedure in its particular stages tends to be changed into an analysis of – secondary in relation to the problem raised – specific issues in the solution of which one can see the justification of the viewpoint on this fundamental matter. In an analysis oriented thusly, the key role is played by argumentation that is aimed at submitting a solution regarded as competitive in relation to the proposed one manifesting itself in pursuit for emphasising the greater importance of case clarification in comparison with clarifying a case in preparatory proceedings to a critical assessment.

The foregoing considerations give rise to formulating a proposal of a different approach to the problem of the relation between preparatory proceedings and court proceedings, which allows the arrangement involving its construction on the basis of one of the presented concepts in respect of focusing on case clarification in criminal procedure to be disposed of. This can be presented in the following way: the considerations on the assessment of preparatory proceedings and court proceedings must be subordinated to a dominant thought according to which the groundwork of the model of interaction between these stages that ensures the effective execution of the principle of accurate reaction should be two systems of mutual relations that are separated in criminal procedure and that manifest themselves in the form of separate chains of procedural facts that make up two exemplary processes (courses, streams) of clarifying the case at the indicated stages. Within the framework of the highlighted processes, the strengths of each of the concepts presented would be used separately with the minimised significance of the weaknesses resulting from their implementation. The key to this would be the qualification of particular cases for each process (course) of proceedings.

The constructional assumption described above involves departing from the idea of juxtaposing preparatory proceedings and court proceedings or creating an artificial division of procedural actions that serve the purpose of case clarification in any of the stages separately and moving towards emphasising their complementary character in the aspect being analysed. Of fundamental importance for argumentation supporting this point of view is an observation resulting from the assertions made at the beginning of this study that regardless of the procedural stage in which procedural actions are taken with a view to clarify a case, such stages make up a certain whole that must be subordinated to the aim of achieving the same, main cognitive goal that consists in – in general terms – establishing a certain part of reality under examination in a criminal procedure in order to decide on its subject matter [88].

Based on the assumption formulated above, one can assert that within the framework of the

analysed model of interaction, one of the systems of mutual relations between preparatory proceedings and court proceedings should be applied in matters in which, according to the measure assumed later on, it will be possible for the court to decide a legal dispute without holding court proceedings, and hence to base the decision first of all on the evidence collected in preparatory proceedings. This system would indicate an advantage of preparatory proceedings over court proceedings in the aspect of case clarification in a criminal procedure. The other system should refer to cases heard in court proceedings whose clarification requires using the advantages of the concept that involves the supremacy of court proceedings in the aspect under consideration. In this system evidentiary proceedings before the court would have to be shaped in such a way that it should create an arena for the clashing of views on the facts and the law that are presented by the adversarial parties of a legal dispute, that is to say, the litigating parties by means of proofs presented directly before the court, which remains an impartial arbiter towards the previously mentioned participants of the proceedings [89].

Looking at the conceptual solution presented through the prism of the regulations that function in Polish criminal procedure, one can observe that its assumption on the normative level would allow for the simplification of the model of clarification of the case in criminal procedure through the restriction of the entire group of varieties [90] in which the course of criminal procedure manifests itself for two streams of procedural facts that make up preparatory and court proceedings in public law cases.

When clarifying the case in the model of interaction of preparatory proceedings and court proceedings, one should primarily emphasise the fact that in each of them delivering a judgement stating the guilt of the defendant must be based on proving that the crime was committed [91]. This involves the requirement of collecting evidence, in light of which certain facts and circumstances, which are important for the settlement of a case will be objectively convincible in accordance with the idea of substantial justice, and, on the other hand, will be faced with the court's subjective assessment of their occurrence [92]. It should be seen without a doubt that the extent of the complexity of the process of presenting evidence in a criminal procedure may vary due to the differences in respect to the volume of evidentiary facts that are collected, which when logically interwoven make up the streams that lead to asserting the main fact and the number of such streams of facts binding the awareness of the proceeding organ with the incident under examination, which are necessary for recognising the main fact as proved [93]. This serves as a background for indicating two fundamental regularities. On the one hand, the causal connections between the facts are governed by a regularity according to which the fewer evidentiary facts that comprise a stream that leads to establishing the main fact the higher the probability of a circumstance being the subject matter of procedural presentation of evidence [94]. On the other hand, the more of such streams that are gathered in the hands of a judicial body that is responsible for making a binding settlement of a legal dispute, the greater the probability of establishing the facts that relate to the course of the past event that is under examination in an objective reality. There should be no doubt posed by an argument that the ultimate measure of the number of streams of facts and their evidentiary fact "saturation" must in any case be the possibility of recognising the main fact that is argued as proved. Without it, both the "saturation" of the streams of facts and their number might be subject to an excessive increase despite the fact that this would not bring any measurable benefit from the point of view of a method of settling a legal dispute by the court.

The considerations above give rise to reflections over *sui generis*, a model of argumentation in reduced proceedings that would enable the main fact to be proved (the ascertainment of the defendant's guilt), thereby providing the minimum "saturation" of streams of facts leading to this end and a limitation of their number. The realisation of this general thought in the framework of the model of interaction between preparatory proceedings and court proceedings should be seen in the founding argumentation in the reduced course of criminal procedure on an accused person's plea of guilty, and assuming that this should take place during the first stage of the procedure. It is necessary to stress that the plea of guilty should be complete (*confessio plena*), meaning that it must concern all of the essential circumstances of a case referring to the issue of perpetration, guilt, legal qualification and penalty [95]. Only under this condition can the clarifications that are made by the accused during preparatory proceedings make other evidence redundant [96]. From another point of view, it is worth noting that only a complete plea of guilty on the part of the accused can provide sufficient evidentiary grounds for a binding settlement of a legal dispute in reduced proceedings [97].

As a result of the foregoing considerations, one may argue that an accused person who pleads guilty in the first stage of the procedure should pose a criterion to determine whether a case is directed to the case clarification path in reduced proceedings and consequently determining the separation of this course of criminal procedure within the framework of the postulated model of interaction. Cases in which an accused person pleads not guilty in preparatory proceedings as part of the institution of presenting charges or in a further phase of this stage of criminal procedure would be subject to clarification in litigious proceedings, which would mean that they are directed to a path that leads to the recognition and settlement of a case during court proceedings. It should not escape

our attention that the adopted criterion on the functional level offers the possibility of indicating with considerable accuracy and in a relatively simple way matters that can be "handled" in reduced proceedings without the necessity of start court proceedings [98].

The basic constructional assumptions that are presented above illustrate the fundamental rules to which the model of interaction between preparatory proceedings and court proceedings should be subordinated, and are reinforced in the belief that in a predominant number of criminal cases effectively conducting the principle of the effective execution of the accurate reaction in a criminal procedure should consist in creating conditions for the settlement of a legal dispute first of all on the basis of the evidence collected in the first stage of a criminal procedure, including an accused person's plea of guilty. Owing to this judicial bodies would be able to concentrate their power and attention on criminal prosecution and the administration of justice in other cases that are subject to clarification in the first stage of criminal procedure and during court proceedings [99] in which the effective realisation of the principle indicated does not necessarily have to go hand in hand with the criminal procedure economics. This belief reflects a strong tendency that is noticeable against the background of the evolution of criminal procedure, which led to the development a double-track course of proceedings in the European systems of criminal procedure law (*Zwei-Klassen-System der Strafprozesse*). One of these tracks, which is applicable in most criminal cases, involves the quick settlement of a legal dispute based on the evidence collected in preparatory proceedings, whereas the other involves conducting adversarial court proceedings in the remaining small number of cases, which requires considerable time and expense [100].

From a broader perspective, both in the tendency presented and in the model of interaction of preparatory proceedings and court proceedings outlined above, one can see a reference to the long-standing manner of proceeding that is present in the system of *common law*, in which in the predominant number of criminal cases a judgement is delivered on the basis of an accused person pleading guilty (*plea of guilty*), while only a small number of cases (about 10% of the overall number of cases) are heard during court proceedings [101]. As a justification of this solution it is emphasised in the Anglo-American literature that while court proceedings at common law serve the purpose of discovering the truth within adversarial evidentiary proceedings by means of formal procedural rules and with the participation of society, proceedings based on a plea of guilty aim at revealing the truth and simultaneously ensuring the effectiveness, economy, speed and fluency of a criminal procedure [102]. It can be observed that the motives quoted harmonise with the assumptions that underlie the distinction between two courses of criminal procedure in the framework of the model of interaction of preparatory proceedings and court proceedings described above, and in concluding the conducted considerations, it must be stressed that in the reality of contemporary criminal procedure, there is a deepening approximation of the functioning of the postulated solutions based on the legal systems of continental Europe and the legal constructs that are typical of the *common law* system, which has already been shown on another occasion, i.e., while analysing evidentiary proceedings on the grounds of the systems discussed by P. Roberts and A. Zuckerman [103]. If we give this approximation a deeper consideration, there is actually nothing surprising about it since it can be argued that it shows that regardless of the legal system in which a criminal procedure regulation is embedded, its subordination to the achievement of parallel goals in a democratic state that is ruled by law leads to embarking on similar paths to their implementation and thus respond to the challenges of the contemporary criminal procedure.

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1. On the grounds of the German criminal procedure apart from the mentioned stages, a separate stage is distinguished in the form of transitional proceedings (Zwischenverfahren). Beulke, W. (2010). Strafprozessrecht: C.F.Muller. 2; Kuhne, H.H. (2007). Strafprozessrecht. eine systematische Darstellung des deutschen und europaischen Strafverfahrensrechts: C.F.Muller. 2-4; Roxin, C. (1998). Strafverfahrensrecht. Munchen: C.H.Beck Verlag. 20-21; A similar distinction in relation to the English system of criminal procedure law is made by J. R. Spencer. See also Spencer, J. R. (2002). The English System. In M. Delmas-Marty, J. R. Spencer (Eds.). European Criminal Procedure (p. 165). Cambridge, England: Cambridge University Press.
2. The term "procedural fact" is used in the meaning proposed by M. Cieslak for determining any relatively coherent and independent chain in the procedural motion with which law relates procedural effects. Cieslak, M. (1974). Polska procedura karna. Warsaw: Panstwowe Wydawnictwo Naukowe. 47.
3. In the cybernetic approach preparatory proceedings and court proceedings may be presented in the form of two interacting elements – "black boxes", which are some basic, distinguishable chains of a dynamic system covering criminal procedure from its instigation to the delivery of a judgement by a first instance court. For complete clarity, it is necessary to underline that the omission of the cybernetic analysis of relations between preparatory proceedings and court proceedings in this study derives from the belief that it does not seem necessary for the purpose of the present considerations, and instead of possible benefits it might have brought seem redundant, and what is worse, the apparently scientific use of cybernetic

terms in respect of observations which could otherwise be presented by means of simpler concepts. For more on a cybernetic analysis of juristic phenomena see Wiener N.. (1960). Cybernetyka a spoleczenstwo. Warsaw: Ksiazka i Wiedza. 114; Lang, W. (1963). Struktura kontroli prawnej organow panstwowych Polskiej Rzeczypospolitej Ludowej. Studium analityczne z zakresu ogolnej teorii kontroli prawnej. Warsaw, Cracow: Panstwowe Wydawnictwo Naukowe. 59; J. Wroblewski (1968). Prawo a cybernetyka (Zarys problemow). Panstwo i Prawo (12), 896.

4. Incidentally, it may be noted that in relation to particular procedural stages it is possible to talk about a functional connection of their constituent procedural facts. See Cieslak, M. (1974). Polska procedura karna. Warsaw: Panstwowe Wydawnictwo Naukowe. 53.
5. Ibid. at 53; Marszal, K. (2008). Proces karny. Zagadnienia ogolne. Katowice: Oficyna Wydawnicza Volumen. 417.
6. On the structure of criminal procedure see Cieslak, M. (1974). Polska procedura karna. Warsaw: Panstwowe Wydawnictwo Naukowe. 52; Marszal, K. (2008). Proces karny. Zagadnienia ogolne. Katowice: Oficyna Wydawnicza Volumen. 23.
7. Incidentally, it should be noted that the term "interaction" appears on the grounds of the German criminal procedure science in which it is used by E. Schluchter in the context of examination proceedings that lead to a settlement of the subject matter of a criminal procedure (*Weg zur Entscheidung im Erkentnissverfahren*). Analysing the path that leads to the indicated settlement, the author cited mentions the interaction elements (*Interaktionselemente*) that co-create the *sui generis* triad, which consists of the procedural entities that affect the course of lawsuit through its procedural activity or passivity, procedural actions and the subject matter of the lawsuit concealing an offence of an accused person in relation to which proceedings are held. Of great importance in the presented conception is the assertion that the elements mentioned are not isolated from each other but that they affect each other as a result of the crossing of various behaviours of particular procedural entities. According to E. Schluchter, the actions of procedural entities, based on contradictoriness and cooperation lead to an interaction which shapes the structure of criminal procedure. In light of this belief, preparatory proceedings, transitional proceedings and court proceedings constitute the areas of operation for the interaction (*Wirkungsfeld der Interaktion).* See further Schluchter, E. (1983). Das Strafverfahren. Koln, Berlin, Bonn, Munchen: Heymanns. 1-2, 375 (the presented position reveals a look at a criminal procedure as a phenomenon composed of certain connections between elements that make up its structure and in this scope the viewpoint presented in this study harmonises with it.
8. The classical study in the Polish literature in which such a research approach is presented is the work by S. Waltos. See further Waltos, S. (1968). Model postepowania przygotowawczego na tle prawno porównawczym. Warsaw: Panstwowe Wydawnictwo Naukowe. 98.
9. Thus, e.g., Kaftala, A. (1974). Kontrola sadowa postepowania przygotowawczego. Warsaw: Wydawnictwo Prawnicze. 7; In the German doctrine of criminal procedure this type of approach is presented among others by the others. See further H. Biechtler (1950). Die gerichtliche Anklageprufung. Gedanken aus Vorschlage zu einer kunftigen Strafprozessreform. Neue Juristische Wochenschrift (14), 530; Loritz, H. (1996). Kritische Betrachtungen zum Wert des strafprozessualen Zwischenverfahrens. Frankfurt am Main, Berlin, Bern, New York, Paris, Wien: Lang. 17.
10. Due to the limited scope of this study the specific issues relating to the development of particular elements of the dynamic system including the procedural stages in which the rules indicated above are or should be reflected must be outside of the framework of the following considerations.
11. The terms that have been quoted in brackets are mapped from the concepts adopted by M. Lipczynska, who in her research distinguished the positive (assertory), prognostic and postulative model. See further, M. Lipczynska (1971). Model postepowania kontrolnego w k.p.k 1969. Panstwo i Prawo (2), 298.
12. This tendency may be observed on the grounds of the Amendment Bill on the Amended Act of 5 June 2012 (the bill with justification is available at ms. gov. pl in the file related to drafts of legal acts).
13. See further Zagrodnik, J. (2013). Model interakcji postepowania przygotowawczego oraz postepowania glownego w procesie karnym. Warsaw: C.H.Beck. 74.
14. Ibid. at 62.
15. Kotarbinski, T. (1974). Abecadlo praktyczności. Warsaw: Wiedza Powszechna. 37; Kotarbinski, T. (2003). Dziela wszystkie. Prakseologia, part II. Warsaw: Ossolineum. 5; Szaniawski, K. (1994). Prakseologia a teoria decyzji. In K. Szaniawski (Eds.). O nauce, rozumowaniu i wartosciach. Pisma wybrane (p. 77). Warsaw: Panstwowe Wydawnictwo Naukowe.
16. I think the parallel thought can be traced in M. Cieslak's assertion according to which in terms of ensuring the execution of the principle of the accurate repression "norms of criminal procedure constitute – at least intentionally – put in a legal form purposive recommendations indicating the best and safest path to the achievement of the requirements of accurate repression". See Cieslak, M. (1965). Niewaznosc orzeczen w procesie

karnym PRL. Warsaw: Wydawnictwo Prawnicze. 6.

17. Waltos, S. (1968). Model postepowania przygotowawczego na tle prawno porównawczym. Warsaw: Panstwowe Wydawnictwo Naukowe. 108.
18. For more, see among others: M. Damaska (1975). Structures of Authority and Comparative Criminal Procedure. The Yale Law Journal (84), 504; K. Ambos and J. Woischnik (2001). Strafverfahrensreform in Lateinamerika. ZStW (2), 359; T. Hornle (2005). Unterschiede zwischen Strafverfahrensordnungen und ihre kulterellen *Hintergrunde.* ZStW (4), 807; Rogacka-Rzewnicka, M. (2007). Oportunizm i legalizm scigania przestepstw w swietle wspolczesnych przeobrazen procesu karnego. Warsaw: Wolters Kluwer Polska. 70; Schroeder. F. Ch. (2000). Der Geltungsbereich des Legalitatsprinzips. In J. Czapska, A. Gaberle, A. Swiatlowski & A. Zoll (Eds.). Zasady procesu karnego wobec wyzwan wspolczesnosci. Ksiega ku czci profesora Stanislawa Waltosia (p. 493). Warsaw: Wydawnictwo Prawnicze
19. The term "administration of justice" should be understood as an activity consisting in providing a binding settlement by way of applying the law of legal disputes within the framework of which at least one of the parties is an individual or another entity (e.g., legal person, an organisational unit without a legal personality but with legal capacity). For more on the issue of the indicated term, see the considerations included in Polish literature. See further J. Zagrodnik, n. 13 at 100. In the German literature, a wide range of viewpoints on the administration of justice was recently presented by V. Haas. See further Haas, V. (2008). Strafbegriff, Staatsverstandnis und Prozessstruktur. Zur Ausubung hoheitlicher Gewalt durch Staatsanwaltschaft und erkennendes Gericht im deutschen Strafverfahren. Tuningen: Mohr Siebag Verlag. 336 and the literature cited there.
20. Bearing in mind what was said above on the value of preparatory proceedings in the contemporary criminal procedure, it should be added that as a result of the laws quoted the court's exclusive and absolute jurisdiction to provide binding settlements of legal disputes in cases involving crimes basically determines that within the constitutional order of the states indicated, the activity of the authority of the criminal prosecution may not balance the court's indicated competence, and thus justify shifting the focus of a criminal procedure in the aspect of settling a case from court proceedings to preparatory proceedings, which is also beyond the scope of operation of the model of interaction being analysed.
21. "Legality" should be understood as the compliance of proceedings with the rules or norms of law. In this aspect a judicial review of preparatory proceedings concentrates on the examination of the regularity of the actions conducted as part of such proceedings. On the issue of legality. See further Tobor. Z. (1993). Legalnosc a praworzadnosc' in Adam Litynski, Zygmunt Tobor, Leon Tyszkiewicz (Eds.). Rozwazania o panstwie i prawie. Ksiega jubileuszowa ofiarowana Profesorowi Jozefowi Nowackiemu (193). Katowice: Uniwersytet Slaski
22. S. Waltos (1971). Rola sadu w postepowaniu przygotowawczym. Problemy Praworzadnosci (1), 7.
23. In this study I use the terms "comparative verdict" and "comparative value" for determining the appraisal of preparatory proceedings and court proceedings within the framework of a dynamic system, which makes up criminal procedure. In the scope of the adopted terminology I refer to the distinction of appraisals between classifying, merit-related and comparative, as presented by R. Alexy. See Alexy, R. (2010). Teoria praw podstawowych. Warsaw: Wydawnictwo Sejmowe. 119.
24. An invaluable contribution to providing Polish readers with knowledge about the problems against a broad comparative law background is the achievement of S. Waltos. See S. Waltos, Model postepowania, above, n. 8 at 107. See also an overview of viewpoints on the goals and functions of preparatory proceedings in the 19th and early 20th century literature made by the German literature. See further Messinger, E. (1938). Die Funktion der Voruntersuchung unter besonderer Berucksichtigung der Bundesstrafprozessordnung vom 15. Juni 1934. Bern: (Buchdruckerei E. Schoop and Company. 60.
25. Kulemann, W. (1904). Die Reform der Voruntersuchung. Vorschlage zu einer Anderung der Strafprozessordnung nebst einem Gesetzentwurf mit Begrundung. Berlin: De Gruyter. 9.
26. It is worth noting that this viewpoint was echoed in Soviet criminal law science. See Strogowicz, M.S. (1952). Proces karny. Warsaw: Wydawnictwo Prawnicze. 248.
27. W. Kulemann, above, n. 25 at 18, 76. By using a vivid comparison to a theatrical play, W. Kulemann emphasises that in order to work out a correct critique, a critic should be offered the possibility of participating in a dress rehearsal preceding the first night to be reviewed. Following this he claims that collecting complete evidence in preparatory proceedings allows the accused to familiarise himself with his lawsuit situation and prepare a defence for the purpose of the first night, which is the court proceedings in this case. It does not seem necessary at this point to note that the position quoted was formulated in a legal reality in which clarifying a case in preparatory proceedings was an examining judge's task. The viewpoint taken by K. Bzowski, according to which "a good administration of justice needs not two merit-

related instances but appropriately set preparatory proceedings and possibly excellent, collective organisation of merit-related instance …" corresponds with W. Kulemann's position. See further K. Bzowski (1936). Jeszcze o liczbie instancji w postepowaniu karnym. GSW (42), 581.

28. Lilienthal, K. von (1906). Voruntersuchung und Entscheidung uber die Eroffnung des Hauptverfahrens. Kritische Besprechungen. In P. F. Aschrott (Eds.). Reform des Strafprozesses. Kritische Besprechungen der von der Komission fur die Reform des Strafprozesses gemachten Vorschlage (p. 389). Berlin: J. Guttentag. As for the criticisms of the proposal presented, see further Aschrott, P. F. (Eds). (1906). Generalreferat uber die Reform des Strafprozesses, erstattet fur die XI. Versammlung der IKV. Gruppe Deutsches Reich. In P. F. Aschrott (Eds)s. Reform des Strafprozesses. Kritische Besprechungen der von der Komission fur die Reform des Strafprozesses gemachten Vorschlage (p. 87). Berlin: J. Guttentag.
29. Feuerbach, P. J. A. (1808). Lehrbuch des gemeinen in Deutschland gultigen peinlichen Rechts. Giessen: Heyer. 523.
30. K. von Lilienthal, above, n. 28 at 389-90; H. Gross (1904). Marginalien zur Abhandlung von Prof. C. Stoos in Wien: Zur Reform des Strafprozesses. Archiv fur Kriminal-Anthropologie und Kriminalistik (1/2), 131; P. F. Aschrott, above, n. 28 at 87.
31. A. von Kries (1889). Vorverfahren und Hauptverfahren. ZStW (9), 4; Kries, A. von. (1892). Lehrbuch des Deutschen Strafprozessrechts. Freiburg: Mohr. 461.
32. Kries, A. von. (1892). Lehrbuch des Deutschen Strafprozessrechts: Freiburg: Mohr. 473-74.
33. I. Kondratowicz (1935). Czy potrzebna jest reforma postepowania przygotowawczego karnego? GSW (17) 258. Also, compare notes on the normative concept of investigation in the Code of criminal proceedings of 1928: Nisenson, J., Siewierski, M. (1933). Kodeks postepowania karnego z komentarzem i orzecznictwem Sadu Najwyzszego wraz z przepisami wprowadzajacymi, wykonawczemi i dodatkowymi. Warsaw: Drukarnia Policyjna. 129.
34. C. Roxin, above, n. 1 at 306: Ernst, Ch. (1986). Das gerichtliche Zwischenverfahren nach Anklageerhebung, Frankfurt am Main – Bern – New York: (Peter Lang GmbH, Internationaler Verlag der Wissenschaften. 10; H. Wagner (1997). Rechtliches Gehor im Ermittlungsverfahren. ZStW (3), 557; M. Jahn (2003). Das partizipatorische Ermittlungsverfahren im deutschen Strafprozess. ZStW (4), 822-823.
35. F. Riklin (2006). Die Strafprozessrechtsreform in der Schweiz GA (7), 495; H. Jung (2002). Einheit und Vielfalt der Reformen des Strafprozessrechts in Europa GA (2), 69.
36. Hodgson, J. (2005). French Criminal Justice. A Comparative Account of the Investigation and Prosecution of Crime in France. Oxford: Hart Publishing: Oxford. 32. Also, on this issue see the position by L. Schaff cited below.
37. H. Wagner, above, n. 34 at 557.
38. In this vein see further F. Aschrott, above, n. 28 at 90; Krzymuski, E. (1910). Wyklad procesu karnego austryackiego. Cracow: Krakowska Spolka Wydawnicza. 30-31; Peters, K. (1985). Strafprozess. Ein Lehrbuch: Heidelberg: Karlsruhe. 535.
39. Schmidt, E. (1964). Lehrkommentar zur Strafprozessordnung und zum Gerichtsverfassungsgesetz. Teil I. Die rechtstheoretischen und die rechtspolitischen Grundlagen des Straverfahrensrechts. Getynga: Vandenhoek & Ruprecht. 78.
40. S. Waltos, above, n. 8 at 108.
41. Jahn, above, n. 34 at 823.
42. It should be noted that this is not the kind of assessment that would enjoy general recognition. This is best proved by the position taken on the grounds of the analysis of amending tendencies in the French criminal procedure by J. Hodgson, who argues that they manifest the return to a more closed and non-public procedure and an abiding faith in the value of the accused person's plea (*the religion of the confession*). See further J. Hodgson, n. 36 at 62.
43. M. Jahn, above, n. 34 at 824.
44. B. Schunemann (2002). Wohin treibt der deutsche Strafprozess? ZStW (1), 14, 22.
45. A. Murzynowski (1954). Zamkniecie śledztwa Nowe Prawo (3), 43.
46. A. Murzynowski (1991). Uwagi na temat projektu kodeksu postepowania karnego (rozwazania modelowe). Problemy Praworzadnosci (6), 17.
47. Ibid. at 16-17.
48. Schaff, L. (1961). Zakres i formy postepowania przygotowawczego. Warsaw: Panstwowe Wydawnictwo Naukowe. 129; W. Daszkiewicz (1961). Review of a book by L. Schaff entitled Zakres i formy postepowania przygotowawczego. RPEiS (4) 211, p. 274; M. Siewierski (1961). Koncepcje kodyfikacyjne postepowania przygotowawczego. Problemy Kryminalistyki (29), 10.
49. L. Schaff, n. 48 at 135.
50. Ibid. at 136.
51. S. Waltos, *above*, n. 8 at 108-09. In recent years the presented approach to the problem of the relations between preparatory proceedings and court proceedings has been presented among others. See further Kardas, P. (2010). Garsc refleksji o standardzie rzetelnego procesu w kontekscie zasady prawdy materialnej oraz konstrukcji czynnosci sadowych w postepowaniu przygotowawczym. In J. Skorupka, & W. Jasinski (Eds.). Rzetelny proces karny. Scientific

conference proceedings, Trzebieszowice 17-19 September 2009 (p. 160) Warsaw: Wolters Kluwer Polska.

52. Cf. L. Schaff, Zakres, above n. 48 at 128; Prusak, F. (1973). Pociagniecie podejrzanego do odpowiedzialnosci w procesie karnym. Warsaw: Wydawnictwo Prawnicze. 32-33; S. Stachowiak (1998). Zadania i funkcje postepowania przygotowawczego w nowym kodeksie postepowania karnego. Prokuratura i Prawo (1), 7-8; P. Kardas, above, at. 51 at 160.
53. See L. Schaff, above, n. 48 at 128; S. Waltos, Model postepowania, above, n. 8 at 98 and the literature quoted there.
54. L. Schaff, above, n. 48 at 132.
55. A. Murzynowski. (1983). Model postepowania przygotowawczego w europejskich panstwach socjalistycznych. ZN ASW (33), 85-6.
56. Kries, A. von. (1892). Lehrbuch des Deutschen Strafprozessrechts. Freiburg: Mohr. 473.
57. Polzin, H. (1903). Die gerichtliche Voruntersuchung in Archiv fur Kriminalanthropologie. Vogel. 95.
58. See S. Waltos, above, n. 8 at 106.
59. See Grzegorczyk, T. (1988). Obronca w postepowaniu przygotowawczym. Warsaw: Wydawnictwo Uniwersytetu Lodzkiego. 38.
60. In the German and Polish literature, this problem was already highlighted. See further Kries, A. von. (1892). Lehrbuch des Deutschen Strafprozessrechts. Freiburg: Mohr. 471; S. Waltos, above, n. 8 at 105; Tylman, J. (1993). Reforma modelu postepowania przygotowawczego. In S. Waltos, Z. Doda, A. Swiatlowski, J. Rybak & Z. Wrona (Eds.). Problemy kodyfikacji prawa karnego. Ksiega ku czci Profesora Mariana Cieslaka (p. 461). Cracow: Uniwersytet Jagiellonski, Katedra Postepowania Karnego; Tylman, J. (1998). Postepowanie przygotowawcze w procesie karnym. Warsaw: Panstwowe Wydawnictwo Naukowe. 4.
61. See J. Grajewski (1988). Wezlowe zagadnienia modelu postepowania przygotowawczego w polskim procesie karnym. Palestra (5), 67; Tylman, J. (1998). Postepowanie przygotowawcze w procesie karnym. Warsaw. 4; Grajewski, J. & Steinborn, S. (2006). Zasada prawy materialnej jako granica upraszczania procesu karnego. In Z. Sobolewski, G. Artymiak (Eds.). Zasada prawy materialnej. Proceedings of the conference held on 15-16 October 2005 (p. 221). Cracow.
62. This is emphasised among others by A. Solarz. See further A. Solarz (1959). Procesowy i kryminalistyczny charakter czynnosci technikow dochodzeniowych. Problemy Kryminologii (19), 44; S. Waltos, above, n. 8 at 103; S. Stachowiak, above, n. 52 at 12.
63. L. Schaff, above, n. 48 at 134; Murzynowski, above, n. 55 at 86.
64. L. Schaff, above, n. 48 at 134; W. Daszkiewicz, above, n. 48 at 274; Tylman, J. (1993). Reforma modelu postepowania przygotowawczego. In S. Waltos, Z. Doda, A. Swiatlowski, J. Rybak & Z. Wrona (Eds.). Problemy kodyfikacji prawa karnego. Ksiega ku czci Profesora Mariana Cieslaka (p. 461). Cracow: Uniwersytet Jagiellonski, Katedra Postepowania Karnego; Tylman, J. (1998). Postepowanie przygotowawcze w procesie karnym. Warsaw: Panstwowe Wydawnictwo Naukowe. 4.
65. See among others L. Schaff, above, n. 48 at 134; W. Daszkiewicz, above, n. 48 at 274; J. Haber (1962). Review of work by L. Schaff: Zakres i formy postepowania przygotowawczego. Panstwo i Prawo (8/9), 433; A. Murzynowski, above, n. 55 at 86; C. Kulesza (1998). Sedzia sledczy, w polskim modelu postepowania przygotowawczego na tle prawnoporownawczym. Panstwo i Prawo (12), 94; Marszal. K. (1993). Funkcjonowanie zasady legalizmu w procesie karnym. In J. Nowacki, A. Litynski, Z. Tobor & L. Tyszkiewicz (Eds.). Rozwazania o panstwie i prawie. Ksiega jubileuszowa ofiarowana Profesorowi Jozefowi Nowackiemu (p. 145). Katowice: Uniwersytet Slaski. In the German literature see e.g., A. von Kries, above, n. 31 at 474.
66. I use the term "evidentiary prohibitions" in the meaning proposed by K. Marszal, i.e., any kind of limitations concerning the possibility of arguing, introducing, conducting and using evidence in criminal procedure. See K. Marszal, above, n. 5 at 294.
67. S. Waltos, above, n. 8 at 153-54. In the Polish literature the presented viewpoint is taken by I. Kondratowicz. See Kondratowicz, above, n. 33 at 275-76; A. Kaftal (1971). Kontrola sadowa postepowania przygotowawczego w nowym kodeksie postepowania karnego. SP (30), 167; Nowak, T. (1971). Zasada bezposredniosci w polskim procesie karnym. Poznan: UAM. 19; M. Cieslak, Z. Doda (1978). Wezlowe zagadnienia postepowania karnego (Ocena realizacji kodyfikacji z 1969 r.) ZN IB PS (9), 161; T. Gardocka (1985). Podstawowe zasady postepowania dowodowego na rozprawie głównej. Studia Iuridica (13), 69; K. Marszal, above, n. 65 at 144; P. Kardas, above, n. 51 at 166-67. A similar position is expressed in the German literature. See further F. Aschrott, above, n. 28 at 92; Heinemann, H. (1906). Stellung des Verteidigers im Strafverfahren. In P. F. Aschrott (Eds.). Reform des Strafprozesses. Kritische Besprechungen der von der Komission fur die Reform des Strafprozesses gemachten Vorschlage (p. 353). Berlin: Guttentag; Spindler von (1906). Die Hauptverhandlung. In P. F. Aschrott (Eds.). Reform des Strafprozesses. Kritische Besprechungen der von der Komission fur die Reform des Strafprozesses gemachten Vorschlage (pp. 454-45). Berlin: Guttentag; W.

Kulemann, above, n. 25 at 21; Ernst, above, n. 34 at 92; W. Degener (2002). Zum Fragerecht des Trafverteidigers gem. § 240 Abs. 2 stop'' StV (11), 622-23; B. Schunemann (2007). Die Zukunft des Strafverfahrens – Abschied vom Rechtsstaat ? ZStW (4), 951; In reference to the Italian criminal procedure see further G. Illuminati (2005). The frustrated turn to adversarial procedure in Italy (Italian Criminal Procedure Code of 1988). Washington University Global Studies Review (4), 572; Ch. Li, (2008). Adversary System Experiment in Continental Europe: Several Lessons from the Italian Experience. Journal of Politics and Law (4), 14.

68. This was emphasised in the German and American literature. See further Aschrott,above, n. 38 at 92; M. Damaska (1992). Of Hearsay and Its Analogues Minnesota Law Review (76), 451; Kuper, W. (1967). Die Richteridee der Strafprozessordnung und ihre Geschichtlichen grundlagen. Berlin: De Gruyter. 207.
69. S. Waltos, above, n. 8 at 153-55. In his considerations the author quoted referred to the German science of criminal procedure in which charges were formulated first of all during discussions over the model of criminal procedure held at the turn of the 19th and 20th century. See further A von Kries, above, n. 31 at 43; W. Kullemann, above, n. 25 at 20.
70. S. Waltos, above, n. 8 at 155.
71. Cieslak, M. (2011). Zasada bezposredniosci de lege ferenda. in S. Waltos (Eds.). Dziela wybrane. Prawo karne procesowe. Artykuly, studia i inne prace (p. 5). Cracow: Wydawnictwo Uniwersytetu Jagiellonskiego.
72. In particular see in-depth considerations by L. Schaff. See further, L. Schaff, above, n. 48 at 144.
73. M. Damaska, above, n. 68 at 432.
74. The presented viewpoint refers to Ovid's words: „*Video meliora, proboque deteriora sequor*", which were quoted by Polish literature. See further Szaniawski, K. (1994). Filozofia podejmowania decyzji. In K. Szaniawski (Eds.). O nauce, rozumowaniu i wartosciach. Pisma wybrane (p. 435). Warsaw: Panstwowe Wydawnictwo Naukowe. In a similar tein see further Gardocka, *Podstawowe*, 73-4. On the issue raised, it is worth referring to the relatively recent results of psychological research on the operation of the human mind, which indicated its subordination to the „rule of minimum effort", according to which „if the same aim may be achieved in different ways, one will end up following the way which requires the least effort." On the grounds of the same research, it was found that man is inclined to prefer data that allows a preliminarily assumed thesis to be confirmed (e.g., charge thesis), which means one's inclination to take suggestions for granted (in the aspect of the considered issues of suggestions resulting from the files of preparatory proceedings). See further Kahneman, D. (2012). Pulapki myslenia. O mysleniu szybkim i wolnym. Warsaw: Media Rodzina. 50.
75. Chojniak, L. & Wisniewski, L. (2012). Przyczyny niesluszn ych skazan w Polsce. Warsaw: Forum Obywatelskiego Rozwoju. 75.
76. M. Siewierski, above, n. 48 at 10; Tylman, J. (1993). Reforma modelu postepowania przygotowawczego. In S. Waltos, Z. Doda, A. Swiatlowski, J. Rybak & Z. Wrona (Eds.). Problemy kodyfikacji prawa karnego. Ksiega ku czci Profesora Mariana Cieslaka (p. 461). Cracow: Uniwersytet Jagiellonski, Katedra Postepowania Karnego.
77. A. Murzynowski, above, n. 55 at 86. See also the remarks by made by polish literature on the model of preparatory proceedings from the point of view of the accused person's entitlements as well as from the defendant's perspective. See further T. Grzegorczyk, above, n. 59 at 39.
78. Skorupka, J. (2009). Znaczenie porozumien procesowych dla modelu postepowania przygotowawczego. In C. Kulesza (Eds.). Ocena funkcjonowania porozumien procesowych w praktyce wymiaru sprawiedliwosci (p. 25). Warsaw: Wolters Kluwer Polska.
79. S. Waltos, above, n. 8 at 98; M. Siewierski, above, n 48 at 10.
80. S. Waltos, above, n. 8 at 107; S. Stachowiak, above, n. 52 at 12.
81. This viewpoint is represented in the Polish and German literature among others. See further Schaff, L. (1961). Zakres i formy postepowania przygotowawczego. Warsaw: Panstwowe Wydawnictwo Naukowe. 136; Stachowiak, above, n. 52 at 12; Benecke, H. Beling, E. (1900). Lehrbuch des Deutschen Reichs-Strafprozessrechts (P. 465). Breslau: Nabu Press; Roxin, above, n. 2 at 306.
82. M. Siewierski, above, n. 48 at 10; S. Waltos above, n. 8 at 98; A. Murzynowski, above, n. 55 at 86.
83. Roberts, P. & Zuckerman A. (2010). Criminal evidence. Oxford: University Press. 294.
84. W. Daszkiewicz, above, n. 48 at 274; J. Haber, above, n. 65 at 433; J. Tylman (1961). Review of a book by L. Schaff, Zakres i formy postepowania przygotowawczego. NP (10), 1302; S. Waltos, above, n. 8 at 98; J. Grajewski, S. Steinborn, above, n. 61 at 221.
85. M. Cieslak, above, n. 2 at 290.
86. W. Daszkiewicz, above, n. 48 at 274; J. Haber, above, n. 65 at 433; J. Tylman, above, n. 84 at 1302; S. Waltos, above, n. 8 at 98.
87. See P. Kardas, above, n. 51 at 162.
88. Cf in the context of a court trial: Zielinski, M. (1979). Poznanie sadowe a poznanie naukowe. Poznan: Wydawnictwo Naukowe UAM. 65.
89. A similar viewpoint was recently taken by polish Authors. See further Paluszkiewicz. H. (2011. O potrzebie dyferencjacji pierwszoinstancyjnych

posiedzen sadowych w polskim procesie karnym. In T. Grzegorczyk (Eds.). Funkcje procesu karnego. Ksiega jubileuszowa Profesora Janusza Tylmana (pp. 563-64). Warsaw: Wolters Kluwer Polska.

90. A complex construction of specific proceedings in the current state of the law was presented in polish literature. See further Swiatlowski, A. (2008). Jedna czy wiele procedur karnych. Z zagadnien wewnetrznego zroznicowania form postepowania karnego rozpoznawczego. Sopot: Arche. 90, 146; Swiatlowski, A. (2010). Wzajemny stosunek sposobow konczenia postepowania karnego. In P. Hofmanski (Eds.). Wezlowe problemy procesu karnego (p. 743). Warsaw: Wolters Kluwer Polska.
91. See Paluszkiewicz, H. (2008). Pierwszoinstancyjne wyrokowanie merytoryczne poza rozprawa w polskim procesie karnym. Warsaw: Wolters Kluwer Polska. 240. An apparently different view was presented by J. Grajewski, S. Steinborn. See further J. Grajewski, S. Steinborn, above, n. 61 at 218.
92. Cieslak, M. (1955). Zagadnienia dowodowe w procesie karnym. Warsaw: Wydawnictwo Prawnicze. 115; K. Marszal, above, n. 5 at 208-09. In a similar vein, see also A. Berger (1931). Przyznanie sie do winy. GSW (29), 398; Grajewski, *Postepowanie*, p. 68; E. Skretowicz (1983). Wybrane zagadnienia dotyczace regul podejmowania decyzji sadowej. An. UMCS (30), 254; Izydorczyk, J. (2011). Prawdopodobienstwo popelnienia przestepstwa oraz jego stopnie w polskim procesie karnym na podstawie k. p. k. of 1997. In T. Grzegorczyk (Eds.). Funkcje procesu karnego. Ksiega jubileuszowa Profesora Janusza Tylmana (9. 175).. Warsaw: Wolters Kluwer Polska.
93. I use the terms main fact and evidentiary fact in the meaning adopted by M. Cieslak. See M. Cieslak, above, n. 92 at 44. According to the author cited, the main fact is "a circumstance which is to be proved finally as a result of evidential reasoning in law", and the evidentiary fact is "a circumstance which is the basis for inferring on a main fact or other evidentiary fact".
94. M. Cieslak indicates in this respect the inverse proportion of the creditability of proofs to the distance between them and the main object of evidence. See further M. Cieslak, above, n. 71 at 5.
95. Judgement of the Supreme Court of 4 April 1989, WR 126/89. In W. Cieslak (Eds.). Kodeks postepowania karnego z orzecznictwem (p. 596). Sopot: Wydaw. Praw. i Ekon. Lex; Zajac, B. (1995). Przyznanie sie oskarzonego do winy w procesie karnym. Cracow: Zakamycze. 57; Grzegorczyk, T. Tylman, J. (2007). Polskie postepowanie karne. Warsaw: Lexis Nexis. 478; Sowinski, P. K. (2009). Przyznanie sie oskarzonego a skrocone formy procedowania. In C. Kulesza (Eds.). Ocena porozumien procesowych w praktyce wymiaru sprawiedliwosci (pp. 109-10). Warsaw: Wolters Kluwer Polska; Broniecka. R. (2009). Ograniczenie postepowania dowodowego w swietle art. 388 k.p.k. In C. Kulesza (Eds.). Ocena porozumien procesowych w praktyce wymiaru sprawiedliwości (p. 203). Warsaw: Wolters Kluwer Polska. On types of pleas of guilty also see A. Berger, above, n. 92 at 399.
96. Sliwinski, S. (1948). Proces karny. Zasady ogolne. Warsaw: Gebethner i Wolff. 638.
97. See T. Grzegorczyk, J. Tylman, above, n. 95 at 478; Hochberg, L. (1962). Wyjasnienia oskarzonego w procesie karnym i ich wartosc dowodowa. Warsaw: Wydawnictwo Prawnicze. 20 (to see also the notes on the issue of pleading guilty in the first stage of criminal procedure formulated on the grounds of previously binding codes of criminal procedure: K. Krasny (1980). Znaczenie wyjasnien podejrzanego w postepowaniu przed sadem. Problemy Praworzadnosci (12), 50–51. In the German literature a similar approach was also taken See further A. Eser (1992). Funktionswandel strafrechtlicher Prozessmaximen: Auf dem Weg zur Reprivatisierung des Strafverfahrens? ZStW (2), 389–90.
98. See further J. Zagrodnik, n. 13 at 129.
99. S. Waltos grasped the idea presented in the form of one of the aspects of pragmatics in criminal procedure. See Waltos, S. (1999). Pragmatyzm i antypragmatyzm w procedurze karnej. In T. Nowak (Eds.). Nowe prawo karne procesowe. Zagadnienia wybrane. Ksiega pamiatkowa ku czci prof. Wieslawa Daszkiewicza (pp. 59-60). Poznan: Printer: J. Grajewski (1991). Postepowanie nakazowe w polskim procesie karnym. SP (1), 59.
100. See T. Weigend (2001). Unverzichtbares im Strafverfahrensrecht ZStW (2) 274; G. Fezer (2010). Inqusitionsprozess ohne Ende? – Zur Struktur des Neuen Verstandigungsgesetz. NZtS (4), 178; H. Jung, above, n. 35 at 66; T. Hornle, above, n. 18 at 829; T. Weigend, (1992). Die Reform des Strafverfahrens. Europaische und deutsche Tendenzen und Probleme. ZStW (2), 486. In the Polish literature the indicated tendency was emphasised recently among others. See further Jasinski, W. (2011). Upraszczanie procesu karnego a strasburski standard jego rzetelnosci. Uwagi na tle orzecznictwa Europejskiego Trybunalu Praw Czlowieka. In T. Grzegorczyk (Eds.). Funkcje procesu karnego. Ksiega jubileuszowa Profesora Janusza Tylmana (p. 612). Warsaw: Wolters Kluwer Polska; Kulesza, C. (2011). Deprecjacja rozprawy glownej w procesie karnym z perspektywy obroncy – uwagi na tle prawnoporownawczym. In A. Przyborowskiej-Klimczak & A. Taracha (Eds.). Iudicium et Scientia. Ksiega jubileuszowa Profesora Romualda Kmiecika (p. 271). Warsaw: Wolters Kluwer Polska and the proposition of developing a model of criminal procedure in reference to this tendency

was put forward by – as was mentioned above – H. Paluszkiewicz, above, n. 89 at 563-64.

101. Uglow, S. Dickson, L. Cheney, D. & Doolin, K. (2002, 2nd). Criminal Justice. London: Sweet & Maxwell. 275; Ashworth, A. & Redmayne, M. (2005). The criminal process. Oxford: University Press. 264; S. C. Thaman (2007). Plea-Bargaining, Negotiating Confessions and Consensual Resolution of Criminal Cases. EJCL (11), 19.
102. See Uglow, S., Dickson, L., Cheney, D., & Doolin, K above, n. 101 at 213; Samaha, J. (2005). Criminal Procedure: Cengage Learning. 474.
103. P. Roberts, A. Zuckerman, above, n. 83 at 56.