Studia Iuridica Lublinensia vol. 34, 2, 2025
DOI: 10.17951/sil.2025.34.2.481-497

Maciej Stodółkiewicz
Maria Curie-Skłodowska University (Lublin), Poland
ORCID: 0000-0003-0593-9618
maciej.stodolkiewicz@mail.umcs.pl

Access to Case Records During Criminal Investigation Proceedings: A Contribution to the Debate Concerning the Deformalisation of Criminal Procedure

Dostęp do akt sprawy postępowania przygotowawczego. Przyczynek do dyskusji wokół odformalizowania procedury karnej

ABSTRACT

Proper knowledge of the content of criminal investigation proceedings files is crucial for the correct implementation of the rights and obligations of the parties to criminal proceedings, and above all allows for the elaboration of an appropriate defence scheme for the suspect or already charged person. Therefore, ease of access to case files at every stage of the proceedings plays a crucial role. Access to the case files is linked to the guiding principles of criminal procedure in the Polish legal system. The purpose of this article is an analysis of access to case files within criminal investigation proceedings in the context of demands for the deformalisation of criminal procedure. The author presents current legal requirements and case law, drawing attention to their practical consequences for the parties to the proceedings, especially the suspect or charged person and his defence attorney. The article also attempts to answer the question whether broader and more automated access to the content of criminal investigation proceedings files at every stage of the proceedings can contribute to improving the adversarial process and transparency of criminal investigation. The analysis leads to the conclusion that electronic access to the content of criminal investigation proceedings files at the stage of court proceedings facilitates

CORRESPONDENCE ADDRESS: Maciej Stodółkiewicz, MA, Lecturer, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Legal Sciences, 5 Maria Curie-Skłodowska Square, 20-031 Lublin, Poland.

to a significant extent the parties in exercising their rights and also improves the work of court administration employees.

Keywords: preparatory proceedings; case files; digitisation of files; computerisation of law; the right of defence

INTRODUCTION

The materials of preparatory proceedings are now available thanks to the File Digitisation System (SDA; in Polish: *System Digitalizacji Plików*). In practice, however, this possibility expires when the case is referred to court, and from that moment on, the files collected so far can only be accessed by reviewing them in traditional form in the court reading room. The current solution necessitates a number of additional steps to be taken by the parties and their representatives, as well as by court staff, which in turn may contribute to slowing down the criminal proceedings.

The purpose of this article is to review and analyse the current methods of recording and making available files collected at the preparatory stage of proceedings, and then to assess the validity of implementing this mechanism in practice in the area of making files available at the court stage. In preparing this paper, the author reviewed the literature and case law on fundamental rights and the guarantees to which parties are entitled at the criminal proceedings stage. This was followed by a thorough analysis of the current form of access to files for the parties at the preparatory stage of proceedings. This process was carried out on the basis of an analysis of legal regulations and the author's own conclusions. This article primarily uses the dogmatic-legal method and a review of the doctrine.

As a result of the analysis of the research problem addressed in this paper, the following theses were put forward:

1. Electronic access to preparatory proceedings materials will strengthen the implementation of fundamental guarantees to which a party is entitled in court proceedings.
2. Restricting access to files collected at the pre-trial stage of preparatory proceedings effectively limits the rights of the parties at the court stage.
3. The electronic tools currently available for use in preparatory proceedings can be implemented in the existing court system.

BASIC GUARANTEES OF THE PARTIES IN PREPARATORY AND COURT PROCEEDINGS

Respect for and observance of the rights and freedoms enjoyed by individuals under the Polish legal system would be of little significance if individuals were

not also entitled to constitutional and procedural guarantees.[1] Pursuant to Article 299 § 1 CPC,[2] the parties to preparatory proceedings are the injured party and the suspect.[3] If judicial activities are carried out at the preparatory stage, the Criminal Procedure Code also grants the prosecutor the rights of a party. The group of participants in the proceedings also includes public interest advocates and witnesses.

The main purpose of introducing constitutional and procedural guarantees is to ensure that participants in criminal proceedings, and in particular suspects and defendants, are afforded a fair criminal trial in accordance with the principles of the rule of law, based on a fair and objective examination of the case. The fundamental procedural guarantees that are actually applicable in criminal proceedings are closely linked to the fundamental principles of criminal proceedings, which include: the presumption of innocence, the right to defence, the principle of material truth, the principle of objectivity, the adversarial principle, the principle of legality, the principle of a fair trial, and the right to information. With regard to the principles deriving directly from the Polish Constitution,[4] which have a significant impact on the status of a party at every stage of criminal proceedings, these are the right to defence and the right to a court.

In the author's opinion, the most important constitutional and procedural guarantees that are constantly linked to the possibility of access to the files of the preparatory proceedings at every stage of criminal proceedings are the right to information, the right to defence and the right to a court.

1. Right to information

The right to information in light of the rights to which a party is entitled at the preparatory stage of proceedings and then during the criminal trial itself is one of the key rights, as it is linked to the determination of trial tactics and has a direct impact on the proper defence of a suspect or defendant. The right to information should be understood as ensuring that the parties have proper access to information concerning the proceedings in question, including, in particular, information about the charges brought, access to the evidence gathered in the case and decisions taken by law enforcement authorities and courts. A party may exercise the right to information

[1] P. Hofmański, *Prawo do sądu w sprawach karnych jako gwarancja ochrony praw człowieka*, [in:] *Podstawowe prawa jednostki i ich sądowa ochrona*, ed. L. Wiśniewski, Warszawa 1997, p. 201.

[2] Act of 6 June 1997 – Criminal Procedure Code (consolidated text, Journal of Laws 2024, item 37, as amended).

[3] B. Skowron, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2023, commentary on Article 299.

[4] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

in person or through appointed representatives in the form of a defence counsel or attorney, depending on the status of the person at a given stage of the proceedings.

The regulations from which the principle of the right to information derives are directly based on legal acts classified as sources of law generally applicable in the Republic of Poland and international agreements. The legal act classified as a source of European law, which includes the regulation constituting the legal basis for the principle of the right to information at the stage of criminal proceedings, is the European Convention on Human Rights.[5] Article 6 (3) (a) of this Convention states that "Everyone charged with a criminal offence shall have the right to be informed, promptly, in a language which he understands, of the nature and cause of the accusation against him". The above provision is the direct basis for the application of the right to information and obliges the investigating authorities to provide the accused with key information about their legal situation.

Under Polish law, the legal act that significantly regulates the right to information is the Criminal Procedure Code. The right to information as a fundamental procedural principle at the stage of criminal proceedings is enshrined in the following provisions:

1. Article 16 CPC stipulates that the investigating authority is obliged to properly inform the participants in the proceedings of their rights and obligations. Failure by the authority to fulfil this obligation or the fulfilment of this obligation in an inappropriate manner may directly affect the deterioration of the procedural situation of the participant in the proceedings.[6]
2. Article 156 CPC – in this case, the legislator grants the parties as well as the participants in the proceedings the right to inspect the case files, make copies, and photocopies thereof. Pursuant to § 5, refusal to disclose files at the preparatory stage of proceedings may only occur if disclosure of the contents of the files would be contrary to the need to ensure the proper conduct of the proceedings or if there is a compelling reason to protect an important interest of the state.[7]
3. Article 300 CPC is a continuation of the obligation under Article 16 CPC incumbent on the authority conducting the proceedings, although in this article, the legislator defines more broadly the catalogue of rights with which the suspect should be effectively acquainted before the first interrogation.[8] Also in § 2, the legislator defines the extensive rights of the injured party, which

[5] Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5, and 8 and supplemented by Protocol No. 2 (Journal of Laws 1993, no. 61, item 284, as amended).

[6] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2025, p. 57.

[7] *Ibidem*, p. 250.

[8] *Ibidem*, p. 301.

should be explained to them by the investigating authority – this also exhausts the characteristics of the right to information in criminal proceedings.

The main principles of the right to information in criminal proceedings are to ensure that the party has the right to information about the charges brought against him or her and the right of access to the case file. The right to information about the charges is extremely important for a person who has the status of a suspect or defendant, as it allows them to properly understand the basis and substance of the charges and enables them to ensure an effective defence, which will be carried out in an appropriate manner. The right of access to the case file is important not only from the perspective of the suspect or accused, but also plays a key role for the victim. Thanks to access to the case file, each party to the proceedings can effectively familiarise themselves with all the evidence gathered in the proceedings in question, and analyse and comment on any evidence that speaks in favour of or against the party.

Each of the bodies belonging to the state apparatus should, in its actions and activities, exercise due diligence to ensure that the right to information is implemented at the highest level and without undue delay. Ensuring that the parties to the proceedings have access to the case files as soon as possible directly contributes to shortening the duration of the proceedings and increasing their reliability – in this case, the aspect of electronic access to files at the preparatory stage plays a key role. The introduction of a similar solution at the court stage would have a significant impact on speeding up the proceedings.

2. Right to defence

The right to defence is one of the fundamental principles of a democratic state governed by the rule of law and of criminal proceedings. It is also considered one of the most important values attributed to every individual on an equal basis and to the same extent under Polish law.[9] It is this principle that guarantees individuals a fair and impartial criminal trial. The essence of the principle of the right to defence is enshrined in the Polish Constitution of 1997, international law and the provisions of the Criminal Procedure Code. The main purpose of the right to defence is to enable a suspect or defendant to challenge the charges brought against them, to challenge the evidence against them, and to present their own evidence in support of their claims.[10] The functioning of this principle mainly grants the suspect or accused person subjective rights, rather than objective rights, in criminal proceedings and significantly affects their procedural status. The principle of the right to defence is a consequence of the principle of the right to information, because in order for

[9] P. Wiliński, *Zasada prawa do obrony w polskim procesie karnym*, Kraków 2006, p. 195.
[10] S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2020, p. 319.

a suspect or accused person to effectively appoint a defence counsel, they must first be effectively informed that they have this right.

The inclusion of the principle of the right to defence in the catalogue of constitutional principles arising from Chapter II of the Polish Constitution has given this principle particular importance and significance for criminal procedure rules.[11] The right to defence is expressed in Article 42 (2) of the Polish Constitution.[12] According to the above provision, "everyone against whom criminal proceedings are conducted has the right to defence at all stages of the proceedings. In particular, they may choose a defence counsel or, under the conditions specified by law, have a defence counsel appointed by the court". The constitutional principle of the right to defence implies that the right to defence must be respected in relation to everyone against whom criminal proceedings are being conducted.[13] However, under the Criminal Procedure Code, the principle of the right to defence is expressed directly in Article 6. The accused has the right to defence, including the right to a defence counsel, of which he or she must be informed.

When discussing the basic principles underlying the right to defence, it is impossible to ignore the issues related to the functions in criminal proceedings that can be attributed to this principle. These are: the guarantee function, the stabilising function, the organisational function, the control function, the information function, and the educational function.[14] The guarantee function highlights the procedural guarantees to which an individual is entitled in criminal proceedings and ensures the proper implementation and protection of their interests. The stabilising function is related to the expression of a catalogue of rights to which every individual is entitled on an equal basis and to the same extent, as well as precisely defining the situation of a suspect or accused person.[15] The organisational function of the right to defence serves to define the scope of rights enjoyed by participants in criminal proceedings, but also sets out the obligations of the procedural authorities towards suspects or defendants. At the same time, it is essential for determining the procedural position.[16] The control function is intended to prevent actions taken by procedural authorities that constitute an abuse of their powers, as well as those that are carried out at the expense of the procedural guarantees of the party. The information function allows suspects, defendants and, above all, defence counsel to familiarise themselves with the content of the charges, the evidence gathered in the case and, most importantly, the decisions and rulings taken in the case and

[11] W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013, p. 46.
[12] See idem, *Polskie prawo konstytucyjne*, Lublin 2010.
[13] Idem, *Konstytucja…*, p. 46.
[14] P. Wiliński, *op. cit.*, p. 201.
[15] K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, Warszawa 2024, p. 163.
[16] P. Wiliński, *op. cit.*, p. 201.

the content of their justifications. The educational function is also extremely important because it illustrates the relationship between the principle of the right to defence and persons not directly involved in the proceedings. Due respect for the fundamental rights of the parties in criminal proceedings has a significant impact on increasing the level of public confidence in the judiciary.[17]

To sum up the essence of the principle of the right to defence, it should be stated that it is both a constitutional and a legally defined principle. The principle of the right to defence is closely linked to other procedural principles, as it defines the position and powers of the main party to criminal proceedings.

3. Right to a court

The right to a court is recognised as one of the fundamental elements of a democratic state governed by the rule of law, ensuring that every individual has the possibility to assert their rights. The right to a court is a fundamental element of the system of legal protection against interference by the state in the sphere of individual freedom, guaranteed by a democratic system governed by the rule of law. The institution of the right to a court is implemented by the judiciary – its task is to guarantee every individual respect for the rights and freedoms granted to them by the applicable legal norms. This right guarantees individuals that the state apparatus in the form of the executive and legislative powers, from which the judiciary is separated, will not violate the limits of possible interference in the sphere of freedoms and rights granted to individuals by the Polish Constitution and the laws.[18]

In criminal proceedings, the right to a court stems directly from regulations contained in the Polish Constitution and other legal acts classified as sources of generally applicable law in the Republic of Poland. The constitutional right to a court is expressed in Article 45 (1) and Article 77 (2) of the Polish Constitution. The Constitution of the Republic of Poland grants the right to a court not only to Polish citizens, but also to every human being. Article 45 (2) states that everyone shall have the right to a fair and public hearing without undue delay by a competent, independent, impartial and non-corrupt court. This provision ensures that every person who appears in any procedural role has the right to a fair and independent court.[19] The content of the second constitutional provision concerning the right to a court, i.e. Article 77 (2), states that no one shall be deprived by

[17] *Ibidem*, p. 202.

[18] P. Hofmański, *Prawo do sądu w ujęciu Konstytucji i ustaw oraz standardów prawa międzynarodowego*, [in:] *Wolności i prawa jednostki oraz ich gwarancje w praktyce*, ed. L. Wiśniewski, Warszawa 2006, p. 271.

[19] *W. Skrzydło, Konstytucja…, p. 58.*

an act or omission of the right to judicial review of his rights and freedoms. It follows from the wording of the provision that every entitled person has the right to initiate or continue proceedings aimed at protecting the freedoms and rights of individuals, while the legislator is obliged to establish court proceedings that guarantee the proper examination of the case.[20] The right to a court in constitutional terms can be understood in two ways: as a constitutional principle and as a subjective right.[21] As a constitutional principle, it obliges state authorities to establish an independent, impartial and independent judiciary whose task is to resolve legal disputes.

The above regulations resulting from the content of the Polish Constitution also express the subjective scope of the right to a court. Pursuant to Articles 45 and 77 of the Polish Constitution, everyone has the right to a court and no one may be denied access to the courts.[22] Therefore, the subjective scope of the right to a court, as well as the very concept of a case contained therein, should be referred to every entity, i.e. a natural person and a legal person, but an essential condition is that they must be subjects of constitutional rights and freedoms.

The essence of the right to a court in objective terms comprises three fundamental elements. The first component is the right of access to a court, i.e. the possibility for a given entity to initiate proceedings before an independent judicial body. The second element of the right to a court is the right to an adequate and fair judicial procedure based on the requirements of reliability, transparency and fairness in the examination of the case. In this case, it is a matter of ensuring that the parties are able to exercise procedural rights appropriate to the subject matter of the proceedings, by enabling them to present their arguments and positions, which the court must consider.[23] The final element of the right to a court is the right to a judgment, i.e. obtaining a binding and enforceable decision on the case in question by an independent and impartial judicial authority.

In Polish criminal proceedings, the principle of the right to a court has a unique meaning, as it applies both to persons suspected of committing a crime and to victims seeking legal protection and punishment of the perpetrators of the harm done to them. Thorough knowledge of the case file and ensuring a quick and informal way of reviewing all the evidence gathered directly affects the proper exercise of the right to a court.

[20] M. Chmaj, *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2008, p. 206.

[21] J. Skorupka, *O sprawiedliwości postępowania karnego*, Warszawa 2013, p. 133.

[22] H. Zięba-Załucka, *System ochrony praw człowieka w RP*, Rzeszów 2015, p. 41.

[23] *Ibidem*, p. 44.

ELECTRONIC ACCESS TO CASE FILES COLLECTED DURING THE PREPARATORY PROCEEDINGS

Optimal use of currently available electronic tools enables the introduction of a system allowing materials obtained during preparatory proceedings to be made available also at the stage of court proceedings. The solution proposed in the article aims to facilitate and speed up the actions taken by the parties and their representatives or defence counsel, as well as to streamline the work of the court. The implementation of the changes is also justified by the need to reduce the formal nature of certain legal procedures, which in turn will contribute to the improvement of the criminal process.

Access to criminal case files is the realisation of the fundamental rights of the parties in criminal proceedings and a guarantee of a fair trial. The right to inspect the evidence gathered is of fundamental importance, primarily from the point of view of the suspect (or defendant), who, thanks to their knowledge of the case file, can first familiarise themselves with the grounds for the charges brought against them and then realistically build their defence. It has been repeatedly pointed out in the literature that a suspect (or defendant) can only defend himself effectively if he is familiar with the investigation or inquiry files. Only full respect for this right ensures that the criminal proceedings initiated remain in line with the fundamental principles of criminal procedure, such as the right to defence, fairness and transparency of proceedings, and, moreover, the possibility of reviewing the legality of actions taken by law enforcement and judicial authorities. The exceptional importance of the right to access case files is evidenced by the fact that both the institution of access to files and the above-mentioned procedural guarantees are included, albeit indirectly, in the provisions of, i.a., the European Convention on Human Rights, the International Covenant on Civil and Political Rights,[24] and the Polish Constitution. This issue has repeatedly been the subject of doctrinal debate and a main issue in the extensive case law of the European Court of Human Rights, as well as the Polish Constitutional Tribunal, the Supreme Court and the common courts.

Bearing in mind how the right of access to case files has developed historically, it should be noted that it was already provided for in the assumptions and draft of the Criminal Procedure Act of 1924. The establishment in 1920 of the Criminal Procedure Section of the Codification Commission of the Republic of Poland was aimed at unifying criminal procedural law for the Polish territories by developing the basic principles and assumptions of the future code and submitting a draft of the

[24] International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966 (Journal of Laws 1977, no. 38, item 167).

new act to the legislator.[25] At the draft stage, two resolutions were adopted which were important from the point of view of access to files in preparatory proceedings. The first of these stipulated that a lawyer was authorised to inspect the investigation files after their closure or after the completion of investigative measures in cases where a full investigation was not pending. The second resolution provided that a lawyer acting as a defence counsel for a suspect (or defendant) has the same rights as the suspect (or defendant).

The actual possibility of accessing the materials of the preparatory proceedings took various forms, given the rules in force over the years, and in practice was sometimes quite limited. For example, drafts of the Criminal Procedure Code drawn up between 1990 and 1995 provided that access of the parties to the preparatory proceedings file depended on the consent of the investigator.[26] It should be noted that the drafts did not provide for any additional circumstances that could justify refusal of access to the files or that would specify an obligation to grant such access. In practice, this meant that access to the case files could be refused without substantive justification, solely at the discretion of the prosecutor conducting the case. The drafts also failed to specify at what stage of the proceedings such a refusal could be granted and at what stage it would be contrary to, e.g., the party's right of defence. The lack of clarification on these issues led to numerous misinterpretations of the provisions implemented, thereby significantly limiting the rights of the parties.

Over the years and following numerous amendments to the Criminal Procedure Code, the right to access case files has become increasingly important, becoming one of the fundamental and most respected rights.

In the current legal situation, based on the provisions of the Act of 6 June 1997 – Criminal Procedure Code, this issue is regulated by Article 156 CPC. Pursuant to § 5 of the aforementioned provision, "Unless it is necessary to ensure the proper conduct of the proceedings or to protect an important interest of the state, during the preparatory proceedings, the parties, defence counsel, representatives and statutory representatives shall be given access to the files, shall be allowed to make copies or extracts, and shall be issued with certified copies or extracts against payment. The person conducting the preparatory proceedings shall issue an order on the access to files, the making of copies or certified copies, or the issuance of certified copies. If access to the files is refused to the injured party at their request, they shall be informed of the possibility of accessing the files at a later date. Once the suspect or defence counsel has been notified of the final date for familiarisation with the

[25] Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Sekcja Postępowania Karnego, *Projekt ustawy postępowania karnego z uzasadnieniem i tablicą porównawczą*, vol. 1, part 1, Warszawa–Lwów 1926, pp. 1–2.

[26] P. Kruszyński, *Prawo podejrzanego do obrony materialnej w projektach k.p.k. (wybrane zagadnienia)*, "Palestra" 1993, no. 7–8, p. 29.

preparatory proceedings, the victim, his or her representative or legal representative may not be refused access to the files, the making of copies or extracts, or the issue of copies or extracts. With the consent of the prosecutor, the files may, in exceptional cases, be made available to other persons during the preparatory proceedings. The prosecutor may make the files available in electronic form".

The quoted provision refers to the possibility of familiarising oneself with the case materials at the stage of the preparatory proceedings. From the perspective of this study, the provision concerning the possibility of the prosecutor making the files available in electronic form deserves special attention. This option has emerged in connection with the widespread digitisation of preparatory proceedings files in prosecution offices and is available by logging in to the portal www.portalzewnetrzny.prokuratura.gov.pl, after obtaining a login and password upon request to the prosecutor conducting the proceedings and with his or her consent. The digitisation of case files and their availability on the Internet is part of the PROK-SYS system, implemented in 2021 in all public prosecution offices, and constitutes a significant change. The possibility of viewing files in the electronic system is a great convenience for the parties to the proceedings, who can now review the evidence gathered in the case at their own pace and in a comfortable manner, without having to make an appointment, go to the prosecutor's office, tediously review paper files and make photocopies. This option also constitutes an important change for employees of the prosecutor's office, as it eliminates the need to organise the date and place of reviewing the files, and the person supervising this activity. Considering the workload of the prosecution service, the possibility of reviewing files in an electronic system is therefore highly convenient from the point of view of organising their work, which in turn translates into the quality of the work of the prosecution service as a whole.

There are therefore many positive aspects to the solution implemented, but it should be emphasised that the option of making files available in electronic form can only be used in preparatory proceedings. An electronic system enabling the review of even all public files has been introduced in the prosecutor's offices, and the entity responsible for granting consent to review the files is, as mentioned above, the prosecutor in charge of the case. The possibility of making files available in the electronic system is therefore limited until the end of the preparatory proceedings and the referral of the case to the court, which from that moment on remains the decision-making authority in all matters relating to the pending case, including the disclosure of its materials.

The court proceedings stage is the stage at which the parties and their representatives/defence counsel, unlike in the preparatory proceedings, may review the case files without any restrictions. This possibility is provided for in Article 156 § 1 CPC, which states: "The parties, defence counsel, representatives and legal representatives shall have access to the court files and shall be given the oppor-

tunity to make copies or extracts thereof. With the consent of the president of the court, these files may also be made available to other persons. Information about the case files may also be made available through an ICT system, unless technical considerations prevent this".

The last sentence of the quoted provision is noteworthy, as it means that, if technical considerations allow, certain information concerning the case is made available in court proceedings through an appropriate system. However, this does not refer to the PROK-SYS system discussed above, which was introduced only in public prosecutor's offices. This refers to the Internet Information Portal of common courts made available by court presidents pursuant to Article 22 § 1 of the Act of 27 July 2001 on the organisation of common courts[27] in conjunction with § 106 (1) of the Regulation of the Minister of Justice of 23 December 2015 on the Rules of Procedure of Common Courts.[28] The Internet Information Portal was created to facilitate access to information on the status of cases pending before common courts and on the actions taken in those cases for entities authorised and entitled under the applicable law (in particular, parties to proceedings and their representatives, as well as judges and prosecutors). In essence, this solution is another facilitation for the functioning of professional representatives, judges and prosecutors, but also a convenience from the point of view of the party, who can at any time access the current activities in their case and certain documents or judgments. The problem, however, is that, firstly, not all documents collected in a case are published in this system. As a rule, the documents made available on the above-mentioned information portal are currently limited to rulings, minutes of hearings and meetings, and other documents, such as summonses or notices to witnesses about the date of a hearing. However, interested parties will not find many important documents there, such as the content of expert opinions prepared in the case (if such opinions were commissioned) or documents submitted to the case file by the parties or entities required to do so by the court. Secondly, the Internet Information Portal only contains documents attached to the case file after the case has been referred to the court. The system does not provide for the introduction of any documents relating to or arising during the preparatory proceedings, such as minutes of hearings and other activities, decisions to present or amend charges, indictments and many others. The parties and their representatives are therefore unable to access the documents collected during the preparatory proceedings via the above-mentioned portal.

The inability to access the materials of the preparatory proceedings in electronic form at the stage of proceedings before the court generates many time-consuming activities. First and foremost, the person concerned must go to or call the court to make an appointment to review the files. The timing depends on the

[27] Consolidated text, Journal of Laws 2023, item 217, as amended.
[28] Journal of Laws 2015, item 2316.

workload of the reading room of the unit concerned, which often means waiting several days. In practice, the review of files is sometimes significantly delayed or temporarily impossible due to, for example, the review of files by the reporting judge or their borrowing by a higher court for the purpose of examining an appeal (e.g. a complaint) or by another court for use in another case. The latter circumstance means that the files remain unavailable for many days or even weeks, which in turn significantly limits the ability of the interested party to familiarise themselves with them efficiently. Consideration should also be given to the difficulties associated with the need to make photocopies of the files oneself. While this is of lesser importance in less complex cases with little evidence, in the case of extensive, multi-volume cases, the task of photographing all the public files remains quite tedious and burdensome.

The numerous positive aspects of making files available in electronic form during preparatory proceedings have therefore given rise to the idea of extending this solution to the later stage of criminal proceedings, i.e. during the trial. This solution would have a decidedly positive impact on the quality of criminal proceedings and guarantee the rights of the parties to those proceedings for several reasons.

It is worth noting that the implementation of a new system (or the expansion of existing solutions, depending on the concept for implementing the idea) and the possibility of making all public materials in a given case available at the stage of court proceedings would standardise access to files throughout criminal proceedings. The interested party, including the defendant or their defence counsel, would have unrestricted and easy access to all files at any time, should the need arise. From the point of view of a lawyer or legal advisor acting on behalf of a party, this is of considerable importance as it streamlines and facilitates their work. After all, knowledge of the files is essential for the proper conduct of a case. Electronic access would eliminate the need to make appointments and review files in the court reading room and the tedious task of making photocopies. This convenience therefore saves time for the person reviewing the files and making photocopies. It should be emphasised that the introduction of this solution is fully in line with the principle of the right to defence, constituting a significant convenience in terms of the rights of the accused. This convenience also applies, of course, to the victim. The possibility of reviewing the preparatory proceedings in electronic form at the stage of court proceedings also saves a great deal of time and many tasks that would otherwise be performed by the employees of that institution. It is widely known that courts also face a heavy workload, including many logistical tasks related to the circulation of files. The review of materials currently requires every court to have a reading room where interested parties can access the case files. Reading rooms should be equipped with appropriately adapted workstations and staff responsible for arranging, registering and issuing materials. However, there are many more people involved in the entire procedure, as the task of reviewing files also requires the acceptance of instructions and the

preparation of files by the department handling the case. The possibility of reviewing files in electronic form would probably not completely eliminate the need for reading rooms, if only because it would be impossible to discriminate against people who do not have access to electronic devices. Nevertheless, such an option would radically reduce its operation, thereby rationalising the duties of court staff and increasing their efficiency by allowing them to devote valuable time to other important activities. As a result of the above, it can be concluded that the possibility of reviewing all public files in electronic form, also at the stage of court proceedings, would contribute to improving the work of common courts and, thus, at least indirectly, to the efficiency of criminal proceedings.

Of course, the idea of allowing the review of all case files during court proceedings requires certain changes, such as the introduction of a practice of collecting all case documentation from the very beginning of the proceedings or the development of a precise tool allowing access to the files (appropriate software). The vision of change may naturally raise some concerns about the capacity of the prosecution service to collect files in electronic form from the outset of proceedings, but if the obligation to introduce documentation were limited to cases initiated after the implementation of the system, without the need to record files from previously initiated proceedings – these activities should not be regarded as an additional obstacle, but as a routine measure aimed at facilitating the work of the prosecution and the courts in the future. It also seems that, given the technological progress and the anticipated final benefits of the proposed solution, such changes are not only necessary but also inevitable. The creation of new solutions should not be based on the assumption that they must be closely aligned with the existing rules of operation of judicial authorities. Even if certain ideas require appropriate modifications, the priority should be to adopt solutions that fulfil their role and are functional in the much longer term. Only such an approach allows for the modernisation and deformalisation of certain legal procedures, in this case through the use of electronic means.

The implementation of this idea is in line with current trends towards the gradual use of newer and newer technical possibilities in various areas of everyday life, including the work of the judiciary and persons involved in criminal proceedings. The idea behind the presented solution is the need to simplify certain procedures that are quite archaic compared to current electronic possibilities, such as those related to granting access to preparatory proceedings files at the pre-trial stage.

DISCUSSION AND CONCLUSIONS

The proposed changes are important because of the intention to optimise access to undoubtedly convenient solutions, but also because of the need to avoid a certain kind of paralysis in urgent and unforeseen cases, such as the COVID-19 pandemic.

The possibility of reviewing all the collected files in electronic form using an appropriate system would prevent, e.g., a situation in which the defendant or his defence counsel would not have access to the case files for many months, as was the case in practice at a critical moment of the pandemic. For a long time, interested parties were unable to make appointments to review the files and familiarise themselves with their content, including making photocopies, which was certainly not a comfortable situation, especially for the defendant, who was planning to prepare for the case. Past events should particularly encourage the legislator to introduce changes aimed at expanding the use of electronic means in court proceedings, which would prevent any difficulties in the future.

It should also be acknowledged that the solutions adopted so far are not adapted to current IT capabilities and, as a result, do not allow for the modernisation of procedures related to criminal proceedings. This issue requires appropriate reflection and the implementation of relevant, innovative solutions, such as those indicated in the article.

The current rules and possibilities for reviewing files vary greatly depending on the stage of the proceedings. This should be changed, also bearing in mind the transparency of the rights of the parties to criminal proceedings. The proposed solution would standardise this issue, allowing for easier and more comprehensive access to their content in electronic form, regardless of the stage of the proceedings.

The introduction of the proposed changes is in line with current electronic capabilities and the development of society. It would be an expression of respect for the fundamental rights of the parties to criminal proceedings, while also providing significant practical assistance to prosecutors and courts. This, in turn, would contribute to improving the entire justice system.

The theses presented in the article have been verified by the author as true. In his opinion, the streamlining of court proceedings through electronic means will have a positive impact on strengthening respect for procedural guarantees of the parties and the fundamental principles of the rule of law, primarily the principle of a fair trial. An analysis of the current factual and legal situation, as well as the considerations presented, have shown that there is an objective possibility of adapting existing and effectively used technical and electronic solutions to court proceedings at the preparatory stage of proceedings by the public prosecutor's office.

REFERENCES

Literature

Chmaj M., *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2008.
Dudka K., Paluszkiewicz H., *Postępowanie karne*, Warszawa 2024.

Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Sekcja Postępowania Karnego, *Projekt ustawy postępowania karnego z uzasadnieniem i tablicą porównawczą*, vol. 1, part 1, Warszawa–Lwów 1926.

Sakowicz A. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2025.

Skowron B., [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2023.

Hofmański P., *Prawo do sądu w sprawach karnych jako gwarancja ochrony praw człowieka*, [in:] *Podstawowe prawa jednostki i ich sądowa ochrona*, ed. L. Wiśniewski, Warszawa 1997.

Hofmański P., *Prawo do sądu w ujęciu Konstytucji i ustaw oraz standardów prawa międzynarodowego*, [in:] *Wolności i prawa jednostki oraz ich gwarancje w praktyce*, ed. L. Wiśniewski, Warszawa 2006.

Kruszyński P., *Prawo podejrzanego do obrony materialnej w projektach k.p.k. (wybrane zagadnienia)*, "Palestra" 1993, no. 7–8.

Skorupka J., *O sprawiedliwości postępowania karnego*, Warszawa 2013.

Skrzydło W., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013.

Skrzydło W., *Polskie prawo konstytucyjne*, Lublin 2010.

Waltoś S., Hofmański P., *Proces karny. Zarys systemu*, Warszawa 2020.

Wiliński P., *Zasada prawa do obrony w polskim procesie karnym*, Kraków 2006.

Zięba-Załucka H., *System ochrony praw człowieka w RP*, Rzeszów 2015.

Legal acts

Act of 6 June 1997 – Criminal Code (consolidated text, Journal of Laws 2024, item 17, as amended).

Act of 6 June 1997 – Criminal Procedure Code (consolidated text, Journal of Laws 2024, item 37, as amended).

Act of 27 July 2001 on the organisation of common courts (consolidated text, Journal of Laws 2023, item 217, as amended).

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5, and 8 and supplemented by Protocol No. 2 (Journal of Laws 1993, no. 61, item 284, as amended).

International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966 (Journal of Laws 1977, no. 38, item 167).

Regulation of the Minister of Justice of 23 December 2015 on the Rules of Procedure of Common Courts (Journal of Laws 2015, item 2316).

ABSTRAKT

Należyta znajomość treści akt postępowania przygotowawczego jest bardzo istotna dla właściwej realizacji praw i obowiązków stron postępowania karnego, a przede wszystkim pozwala na opracowanie właściwego schematu obrony podejrzanego lub już oskarżonego. Stąd też łatwy dostęp do akt sprawy na każdym etapie postępowania odgrywa kluczową rolę. Dostęp do akt sprawy jest powiązany z naczelnymi zasadami procesu karnego w polskim porządku prawnym. Celem artykułu jest analiza dostępu do akt sprawy w postępowaniu przygotowawczym w kontekście postulatów odformalizowania procedury karnej. Autor przedstawia aktualne uregulowania prawne oraz orzecznictwo, zwracając uwagę na ich praktyczne konsekwencje dla stron postępowania, zwłaszcza podejrzanego lub oskarżonego i jego obrońcy. Podejmuje również próbę odpowiedzi na pytanie, czy szerszy i bardziej zautomatyzowany dostęp do akt postępowania przygotowawczego na każdym etapie postępowania

może realnie przyczynić się do zwiększenia kontradyktoryjności i transparentności procedury karnej. Analiza prowadzi do wniosku, że elektroniczny dostęp do akt postępowania przygotowawczego na etapie postępowania sądowego w znacznym stopniu ułatwia stronom korzystanie z ich uprawnień, jak również usprawnia pracę pracowników administracji sądowej.

Słowa kluczowe: postępowanie przygotowawcze; akta sprawy; digitalizacja akt; komputeryzacja prawa; prawo do obrony

Ministerstwo Nauki i Szkolnictwa Wyższego
Doskonała Nauka II

Projekt dofinansowany ze środków budżetu państwa, przyznanych przez Ministra Edukacji i Nauki w ramach Programu „Doskonała Nauka II"