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JUDICIAL FACTOR'S PARTICIPATION IN PRELIMINARY PROCEEDINGS – A COMPARATIVE PERSPECTIVE

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Abstract

The subject of the article is the analysis of the role of the judicial element in preparatory proceedings. The author presents the issue of the preparatory proceedings model, addressing historical and comparative aspects. Subsequently, the article discusses various configurations of the judicial element in preparatory proceedings, namely the model with an investigative judge, the model with a judge for preparatory proceedings, and the model involving court participation. The advantages and disadvantages of these models are highlighted, along with examples from selected countries. In conclusion, the author provides a summative evaluation, identifying what they consider the optimal model and procedural solution, and emphasizes the need for a reassessment of current practices.

Key words: *Preliminary proceedings, criminal procedure, pre-trial model, judge, prosecutor***.**

INTRODUCTION

Law, as a normative system, must constantly adapt to changes occurring in the world. These changes may stem from various sources – social, political, sociological, economic, or technological – yet the law is obliged to keep pace with them. However, not every branch of law is equally receptive to such changes. Criminal law serves as a notable example.

In the context of globalization, the capitalist economic framework, and the development of international organizations such as the Council of Europe and the European Union on the European continent, a process of legal unification has emerged (*J. Osiejewicz 2016, p. 7-16*). This process is largely guided by treaty

law, although not all states participate to the same extent (*M. Wąsek-Wiaderek 2011, p. 7*). Undoubtedly, civil and administrative law (both substantive and procedural) undergo rapid harmonization. Conversely, the situation is markedly different in criminal law, which remains a particularly sensitive domain. This underscores that shaping criminal policy remains a prerogative of sovereign states (*J. Kanz 2015, p. 33-36*).

It appears that states are reluctant to further delegate competencies in the field of substantive and procedural criminal law. Nonetheless, within the framework of the European Union, they have already opted to do so. This development is evidenced by a series of provisions found in EU regulations and directives. On one hand, the necessity of such measures is underscored, particularly in terms of procedures aimed at prevention, counteraction, and prosecution of offenders. On the other hand, there is a clear concern regarding threats to the sovereignty of member states.

The process of unification is significantly influenced by public sentiment. In the first decade of the 21st century, these sentiments were pro-European, arguably pushing towards federalization (*G. Pastuszko, 2023*). However, the situation has changed dramatically in recent years. While the achievements and existing institutions of European procedural criminal law are not disputed, proposals for creating a European Code of Criminal Procedure have been postponed indefinitely or even abandoned altogether (*Kruszyński, Pawelec, 2009, p. 95-118*).

It is worth noting that during the evolution of legal systems, fundamental institutions of democratic states governed by the rule of law have emerged. In the context of criminal proceedings, particular attention must be given to the involvement of judicial authorities during the preliminary stage of proceedings, an integral feature of this phase since the 19th century (*J. Zagrodnik, 2013, s. 238*).

Moreover, this issue holds such significance for the protection of human rights and freedoms that it has been enshrined in treaty law. This includes the requirement for judicial approval for the imposition of pretrial detention during preliminary proceedings, as stipulated in Article 5(1) of the European Convention on Human Rights[1] and Article 9 of the International Covenant on Civil and Political Rights[2]. Consequently, all states party to these international agreements endorse this solution. In some states, this principle is embedded at the constitutional level, such as in Article 13 of the Constitution of the Italian Republic and Article 104 of the Basic Law of the Federal Republic of Germany. However, the minimum standard is regulation within statutory law, as found in the

[1] The Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950, as amended by Protocols Nos. 3, 5, and 8, and supplemented by Protocol No. 2, Official Journal of 1993, No. 61, item 284.

[2] The International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, Official Journal of 1977, No. 38, item 167.

Codes of Criminal Procedure of countries such as France, Austria, Germany, Romania, Hungary, and Poland (*B. Gronkowska, T. Jasudowicz, K. Balcerzak, M. Balcerzak, 2004, p. 13*).

The aim of this article is to present the concept of the preliminary proceedings model in the continental legal system and to analyze selected variants of judicial participation during this stage of proceedings from a comparative perspective. The study will employ methods typical of legal science, including formal-dogmatic, theoretical-legal, historical-legal, comparative, and axiological approaches.

I. THE MODEL OF PRELIMINARY PROCEEDINGS IN THE CONTINENTAL LEGAL SYSTEM

The discussion should begin by noting that the existence of two legal systems – common law and civil law – profoundly influences the approach to the model of preliminary proceedings (*C. Kulesza, 1991, p. 19*). In the common law system, criminal procedural law does not delineate specific stages of criminal proceedings. From this, it can be inferred that preliminary proceedings, as a distinct phase, do not exist. Instead, the proper criminal proceedings commence in court (*K. Eichstaedt, 2016; K. Eichstaedt Warszawa, p. 13*). Investigative and inquiry activities are carried out as part of criminal prosecution but are not considered an integral component of criminal procedure *(C. Michalczuk 2005 p. 180-187*).

The situation is different in the civil law system. Here, preliminary proceedings exist as a distinct and integral stage of criminal proceedings. This structure allows for the definition of forms and the scope of this phase of the process (*A. Kaftal, 1989, p. 54*).

This distinction opens up a range of considerations concerning the shape of preliminary proceedings and the influence of this stage on judicial proceedings. It is essential to begin by defining the concept of a model, which can be understood as a set of fundamental elements of a system that distinguish it from others (*K. Eichstaedt, 2016; K. Eichstaedt, 2009, p. 13; S. Waltoś, 1968, p. 9; C. Kulesza, 1991, p. 15; A. Kaftal 1989 p. 53*). The elements comprising the framework of preliminary proceedings include its objectives (in relation to the objectives of the criminal process), functions, scope, forms, phases, participating bodies and their mutual relationships, oversight, and in democratic states governed by the rule of law, the involvement of judicial authorities during preliminary proceedings. Each of these elements can be regulated differently and thus influences the final shape of the model (*B. Bieńkowska, P. Kruszyński, C. Kulesza, P. Piszczek, 2004, p. 302-324*).

Before undertaking the task of modeling this stage of the process, the legislator must address two key issues:

1. Whether the purpose of preliminary proceedings is to conduct an exhaustive and comprehensive investigation of the case, potentially delaying its conclusion, i.e., the filing of an indictment by the public prosecutor with the court;
2. Whether to shift this burden to the judicial stage and limit preliminary proceedings to gathering only the most essential information for the public prosecutor, sufficient to file an indictment (*A. Murzynowski, 1968, p. 96*).

Beyond these fundamental issues, the proposed model of preliminary proceedings should appropriately balance conflicting procedural principles and strive for both substantive and formal justice (*M. Siewierski, 1961, p. 10*). At the same time, it should introduce solutions that ensure cases brought to court are both formally and substantively prepared (*L. Schaff, 1961, p. 132*). Finally, it is essential to ensure that the provisions of the criminal procedure code comply with constitutional norms and international law (*J. Zagrodnik, 2013, p. 238*).

The legislator must resolve at least four fundamental questions regarding the functioning of the preliminary proceedings model:
1. Who will conduct and direct preliminary proceedings—the court (investigating judge), the prosecutor, or the police?;
2. What powers will the body conducting the preliminary proceedings possess, particularly regarding the collection and preservation of evidence and the application of coercive measures, including pretrial detention?;
3. Who will oversee the preliminary proceedings—should this responsibility rest with the body conducting and directing the proceedings, or should these competencies be divided?;
4. How to regulate the relationships between the bodies involved in preliminary proceedings—the court, the prosecutor's office, and the police (*T. Grzegorczyk, J. Tylman, 2022, p. 807–922; K. Eichstaedt, 2016*).

The last of these issues leads directly to the central theme of this study: the role of judicial authorities in preliminary proceedings. As previously mentioned, adopting the continental model opens the door to discussions about the scope and shape of judicial involvement. However, before exploring the available options, it is essential to emphasize that any regulation should also reflect the legal traditions and culture of a given country. For instance, in Eastern European states after World War II, models were imposed that significantly limited the role of judicial authorities, reducing their participation to a purely superficial presence (*R. A. Stefański, 2010, p. 158*).

II. VARIANTS OF JUDICIAL AUTHORITY PLACEMENT IN PRELIMINARY PROCEEDINGS

As previously mentioned, democratic states governed by the rule of law inherently endorse the involvement of judicial authorities in preliminary proceedings within the criminal process. However, the manner in which this issue is regulated is not uniform. Furthermore, two critical aspects influence the

placement of judicial authority in preliminary proceedings: organizational and systemic distinction, and the scope of activities assigned to the judiciary.

Regarding the first aspect, criminal procedure theory has developed three possible approaches to incorporating judicial authority into preliminary proceedings:

1. The investigating judge serves as the body conducting and directing preliminary proceedings while also supervising them;
2. A judge is delegated to perform a conventional role as an investigator in preliminary proceedings, functioning as a preliminary proceedings judge;
3. The court performs specific actions prescribed by statute during preliminary proceedings (*K. Eichstaedt, 2016; K. Eichstaedt, 2009, p. 13; S. Waltoś, 1968, p. 9; C. Kulesza, 1991, p. 15; A. Kaftal, 1989 p. 53*).

The second aspect is closely related to the first and involves determining the range of activities performed by the judiciary. It should be noted that no universally binding classification of judicial actions exists within the doctrine. However, the most practical classification divides judicial actions into decision-making, supervisory, and evidentiary activities (*K. Malinowska-Krutul, 2008 p. 65-66*), as this creates three distinct sets of actions. Another distinction often cited is between control-decisive actions, decisive-investigative actions, and investigative actions (*M. Kurowski, P. Sydor 2011 p. 98-108*). This latter classification is based on the premise that the legislature may partially introduce the concept of an investigating judge into the criminal procedure system, authorizing them to perform specific investigative tasks (*M. Kurowski, P. Sydor, 2011, p. 98-108*).

The range of judicial activities during preliminary proceedings varies across countries, depending on the adopted model of preliminary proceedings, the role assigned to the judiciary, and the chosen organizational solution. For instance, in Western European countries, courts in certain circumstances conduct witness and suspect interrogations. Conversely, under the Polish legal system, courts are prohibited from interrogating suspects (*K. Eichstaedt, 2016; K. Eichstaedt, 2009; K. Eichstaedt, 2008*).

The author will concentrate on discussing the organizational and systemic solutions using selected examples while partially addressing the catalog of judicial activities.

II.1 THE INSTITUTION OF THE INVESTIGATING JUDGE

The institution of the investigating judge traces its origins back to the European inquisitorial process (J. *Głębocka, 2023, p. 16-17*). However, it first emerged in its modern form during the era when the mixed criminal process began to gain prominence, specifically in the Napoleonic Code of Criminal Procedure of 1808 (*Code d'Instruction Criminelle*). In the 19th century, this institution was adopted by other European nations (e.g., Austria, Germany, and Russia) and became a hallmark of criminal procedure (*J. Głębocka, 2023, p. 16-*

17), demonstrating the leading role of French jurists in shaping procedural criminal law.

The classical concept of the system incorporating the investigating judge divides the pre-trial phase into two forms: a formalized investigation conducted by the investigating judge and a less formal inquiry led by the police. Originally, the inquiry was intended to precede the judicial investigation. However, in the French model, these two forms operate on a horizontal level, with prosecutors referring cases to the judiciary after completing the inquiry, despite the theoretical primacy of the investigation. This shift is tied to the replacement of the Code d'Instruction Criminelle by the Code de Procédure Pénale of December 31, 1957, which has undergone numerous amendments. These reforms have distorted the judicial investigation and intensified debates about abolishing the investigating judge (*J. Głębocka, 2023, p. 127*).

The changes discussed have not been confined to France but have influenced procedural frameworks across Europe. Notably, some models, such as the Spanish one, retain closer alignment with the classical concept of the investigating judge (*P. Kruszyński, M. Warchoł, 2010, p. 71-80*). Nevertheless, an analysis of the organizational framework where a judicial body oversees the pre-trial proceedings remains most illustrative when using the French model as a reference. This model strives to maintain the institution of the investigating judge while adapting it to contemporary challenges in criminal justice.

Given the focus on the role of the investigating judge, this discussion will omit a broader examination of the inquiry phase, instead addressing the judicial role within it. The investigating judge serves as the authority conducting and overseeing pre-trial investigations in the form of judicial inquiries. In France, there are two types of judicial investigations: mandatory for felonies and discretionary for misdemeanors. Investigations can be initiated upon the prosecutor's request, defining the scope of the case. Additionally, the investigating judge supervises other procedural bodies, including the prosecutor and the judicial police.

The investigating judge is expected to perform all investigatory acts personally. However, due to practical limitations, they may delegate specific tasks to the judicial police, a provision frequently utilized in practice. Furthermore, the Code de Procédure Pénale reserves certain actions, such as interrogating suspects and civilian parties, exclusively for the investigating judge. In effect, the judge's role focuses on compiling case files and issuing judicial decisions (*J. Głębocka, 2023, p. 166*). This places the judge in a jurisdictional, supervisory, and guarantor capacity rather than functioning as a traditional investigator.

The trend of curtailing the powers of the investigating judge continues. However, the legislature has not yet abolished this institution or replaced it with a "judge of inquiry." For instance, during judicial investigations, the prosecutor acts as a party to the proceedings and is entitled to appeal orders issued by the

investigating judge to the investigative chamber (*K. Eichstaedt, 2016; J. Głębocka, 2023, p. 224*).

The investigating judge is responsible for decisions regarding the conclusion of an investigation. While obligated to inform the prosecutor and transmit case files to all parties, these parties may request further investigative actions, which the judge is not bound to honor. The judge also performs decision-making functions (e.g., pre-trial detention) and supervisory tasks concerning actions by other pre-trial bodies. Decisions made by the investigating judge during an investigation may be appealed to the investigative chamber. It is noteworthy that in France, pre-trial detention decisions fall under the jurisdiction of a specialized judicial body—the judge of freedoms and detention (*J. Głębocka 2014, p. 275.*).

As previously mentioned, judicial participation extends to the less formal inquiry phase. While this phase aims to expedite case referral to the courts, it does not preclude judicial involvement (*G. Stéfani, G. Levasseur, B. Bouloc, 2006, p. 400*), which can impact procedural efficiency.

An investigating judge may conduct an in flagrante delicto inquiry (*J. Głębocka, 2023, p. 155*) if they accompany the prosecutor to the crime scene, at which point the prosecutor may delegate the investigation to the judge. However, changing the entity conducting this type of proceeding does not alter its character or procedural sequence, as the prosecutor remains responsible for deciding its outcome.

Turning to the preliminary inquiry (the primary form of pre-trial proceedings), its purpose diverges from that of the judicial investigation. In France, the prosecutor conducts preliminary inquiries to determine whether to refer the matter to an investigating judge or to terminate the proceedings. Given its informal nature, this phase generally avoids coercive measures or actions infringing on citizens' rights (with the exception of detention) (*M. Czajka, 2004 s., 528*). However, the judicial police may undertake such actions with the consent of the affected person or judicial approval from the judge of freedoms and detention upon the prosecutor's request (*S. Guinchard, J. Buisson, 2010, p. 664-665*). Specific actions within the preliminary inquiry are reserved solely for the prosecutor or the court (*J. Głębocka, 2023, p. 138*).

This framework highlights that the preliminary inquiry aims to swiftly assess the case and decide whether to escalate it to the investigating judge or prosecutor, setting it apart from the judicial investigation. While these provisions may seem appropriate, the prosecutor's misuse of these rules to bypass judicial investigations is a concerning trend. French legislators face a critical decision on whether to retain and modernize the institution of the investigating judge or replace it with a judge of inquiry. Regardless of the choice, a comprehensive reform will be necessary.

Despite the institution's decline, the investigating judge continues to exist in jurisdictions beyond France and Spain, including Greece, the Netherlands, Belgium, and several South American countries (*A. Pol, 2010, p. 156-164*). It is worth noting that the contemporary role of the investigating judge significantly deviates from its 19th-century foundations.

II.2 JUDGE ASSIGNED TO THE ROLE OF A JUDGE FOR PRE-TRIAL PROCEEDINGS

Another option developed within the framework of a democratic state governed by the rule of law is the delegation of a judge to the notional role of an "investigator." The legal doctrine refers to such a judge as one responsible for pre-trial proceedings or a judge for investigation/inquiry, tasked with performing decision-making, evidentiary, and supervisory activities specified by law. It should be emphasized that the concept of this institution originated in German legal thought; therefore, the institution in question should be analyzed within the context of the German model.

In the 19th century, the German criminal procedure model was based on judicial inquiry and the classic institution of the investigative judge, described in the doctrine as "a prosecutor equipped with full judicial independence." (*K. Bader Tübingen, 1956, p. 6*) However, this institution was not well-regarded. Consequently, during the 20th century, and specifically with the amendment of the Code of Criminal Procedure in 1974, significant changes were introduced to optimize and expedite pre-trial proceedings. The institution of the investigative judge was abolished, and investigative powers, consistent with the principle of separation of powers, were transferred to the prosecution office (*G. Prechtel München, 1995, p. 11*).

The German legislator abandoned the division of proceedings into forms and introduced a unified investigation entrusted to the prosecution office (*P. Girdwoyń, 2004, p. 3-12*), which is described in legal literature as the "master of the investigation." This is also reflected in the so-called general investigative clause, under which the prosecution may undertake any actions necessary to fulfill its statutory duties (*P. Girdwoyń, 2006, p. 60-61*). In this context, the key issue was defining the role of the court in pre-trial proceedings (*Ł. Wiśniewski, 2011, p. 56-67*).

The strong position of the prosecution required an equally robust role for the court. The German legislator introduced a judge supervising pre-trial proceedings, i.e., an judge of inquiry (*P. Girdwoyń 2006, p. 60-61*). This is a judge delegated to carry out activities related to pre-trial proceedings in the lowest-level court within whose jurisdiction a specific action is to be performed. It should be noted that in German pre-trial proceedings, the judge cannot act on their own initiative—an application by the prosecutor or a party is necessary (*P. Girdwoyń, 2006, p. 62-63*). As a result, this judge functions as a jurisdictional and supervisory authority safeguarding human rights and freedoms, while also

performing evidentiary activities in specific situations (*Ł. Wiśniewski, 2011, p. 56-67*).

In a democratic state governed by the rule of law, including within German pre-trial proceedings, only an judge of inquiry, endowed with judicial independence, is authorized to authoritatively intervene in the rights and freedoms of individuals (*M. Zöller München, 2010, p. 1063*). Thus, the legislator entrusted this judge with decisions regarding coercive measures, such as pre-trial detention or so-called corrective and protective measures. However, certain actions, generally reserved for the judge, may be undertaken by the prosecutor in situations where the delay in seeking the judge of inquiry's decision could thwart the objective of the action (e.g., exhumation or procedural wiretapping). Such actions by the prosecution, or in certain cases by investigative officers, are subsequently subject to approval by the judge.

Decision-making activities requiring the court's consent in normal circumstances include: recording and listening to conversations conducted in private homes; seizing items in a newsroom, publishing house, printing house, or radio station; revoking a driver's license as a protective measure; typical seizure of items; detention of postal parcels; recording and listening to telecommunication transmissions; application of operational technical means; searches; and the activities of undercover agents.

During the pre-trial stage, the judge of inquiry acts as a collaborator with the prosecution office and the police (*K. Nehm, 2001, p. 279*). Therefore, in specific cases, the judge should perform certain actions, for instance, when there is a risk of losing evidence or preserving a suspect's confession to the alleged offense (*S. Hüls, 2007, p. 294*). Evidentiary activities conducted by the judge of inquiry may be read during subsequent stages of the proceedings (*P. Girdwoyń, 2006, p. 62-63*).

Interestingly, the evidentiary actions of the judge of inquiry are in contrast to judicial independence, as the judge cannot refuse to perform them (*S. Hüls 2007 p. 294*). Examples include interrogating the suspect or conducting an inspection. These actions deviate from the model of pre-trial proceedings, which is fundamentally conducted for the prosecutor, thereby facilitating the principle of immediacy throughout the entire criminal process (*Ł. Wiśniewski, 2011, p. 56-67*). Despite the controversies, these solutions serve as an essential safeguard ensuring the proper course of criminal proceedings at later stages.

Among the court's decision-making activities, those related to the conclusion of proceedings should be highlighted. For example, with the court's and the suspect's consent, the prosecution may temporarily refrain from filing public charges if the offense constitutes a misdemeanor and simultaneously oblige the suspect to fulfill specific conditions or recommendations, provided there is no public interest in prosecution, and the level of culpability is minimal (*M. Lemke, K. Julius, C. Hehl, H.J. Kurth, E. Rautenberg, D. Temming, 2001, p. 567; R.*

Rother, 2001 p.97; P. Girdwoyń, 2006, p. 132). The prosecution, with the court's consent, is also authorized to discontinue pre-trial proceedings when conditions justify waiving punishment (*P. Girdwoyń, 2006, p. 133; P. Girdwoyń, 2004, p. 9-12*). Additionally, German law includes provisions allowing non-prosecution of perpetrators of terrorist offenses who, on their own or through a third party, disclose circumstances enabling the prevention or detection of such offenses. Decisions on this matter are made by the Federal Prosecutor General with the consent of the Federal Supreme Court (A. R. Światłowski 1998 p.79).

Furthermore, the victim has been equipped with the so-called complaint enforcement mechanism (*P. Girdwoyń, 2006, p. 62-63*). In cases where proceedings are discontinued, the victim may appeal the decision to the superior prosecutor. Following another unfavorable decision, the victim may demand the case be referred to the court by filing a complaint with the competent court. In such cases, the court may request the case files from the prosecution, conduct additional evidentiary actions independently or through the judge of inquiry, and may either uphold the decision or find the complaint justified, which then binds the prosecution (*Ł. Wiśniewski 2011, p. 56-67*).

In summary, German pre-trial proceedings fall under the jurisdiction of the prosecution, which requires the assistance of judicial police and is supervised by a judicial body. While the court lacks initiative – its actions must be triggered by a prosecutor's or party's application (*K. Eichstadt a 2009, p. 22-33*) – the judge of inquiry plays a crucial role in securing the proper course of pre-trial proceedings and evidence for judicial proceedings while acting as a safeguard of human rights and freedoms. Although the doctrine does not regard this institution as ideal, it fulfills its duties (*H. Kintzi, 2004, p. 83*). It requires some optimization, but the legislative practice of other European countries (moving away from the judge of inquiry in favor of a judge for pre-trial proceedings) confirms that the reforms initiated in 1974 were appropriate. A similar institution exists, for instance, in Italy, Switzerland, and Portugal.

II.3 COURT UNDERTAKING SPECIFIC DECISION-MAKING, SUPERVISORY, AND EVIDENTIARY ACTIONS

There are also practical solutions that explicitly indicate that specific actions during the preparatory proceedings must be performed by the court. For example, in Austria, this responsibility lies with a judge of the district court (of a higher level)[3]. In contrast, the situation in Poland is somewhat different. As a rule, it should be the court appointed to hear the case in the first instance, but the Code of Criminal Procedure provides numerous exceptions. Under this framework, judicial actions in preparatory proceedings are carried out by a single judge.

[3] C. Kulesza, Przemodelowanie procesu karnego, https://www.gov.pl/attachment/063450d5-7475-4306-bdc6-3c70c0138f43 [acces: 03.12.2024].

This implies that a judge of a criminal court, who primarily performs adjudicative functions, carries out specific actions during the preparatory proceedings. The judge's participation in the preparatory proceedings is incidental. Moreover, as in the model assuming the operation of a preparatory proceedings judge, the court has not been granted initiative powers; its role is essentially passive (*J. Izydorczyk, 2002, p. 92*). It acts as a guarantor body that generally carries out decision-making, supervisory, and evidentiary actions.

It is worth noting a distinctive feature of the Austrian model that clearly differentiates it from others. The court is not merely an auxiliary body to the prosecution. If, during evidentiary activities, circumstances arise that are significant for assessing the justification of suspicion, the court may, ex officio or upon request, conduct further evidence collection. Evidentiary actions are conducted personally by the judge and cannot be delegated to the police (*E. Fabrizy, 2008, p. 231).* Additionally, the model provides a broadly defined catalogue of evidentiary actions, including, for instance, procedural experiments, adversarial examinations of witnesses and suspects, and the examination of anonymous witnesses. Furthermore, in cases involving a public interest in the form of particularly serious crimes or the suspect's profile, the court conducts certain evidentiary actions upon the prosecutor's request, provided it determines that the statutory prerequisites are met. If these prerequisites are not met, the request is denied by an order, and the actions are not carried out (*E. Fabrizy, 2008, p. 231*).

This definition of the court's role in preparatory proceedings may stem from the fact that Austria only abandoned the institution of judicial investigation in 2004[4]. The situation in Poland is somewhat different. While in earlier times the Polish model of preparatory proceedings was also based on the institution of an investigative judge (1918–1949), changes related to World War II led to the Sovietization of Polish law (*R. A. Stefański, 2010, p. 158*). Consequently, the Soviet model of preparatory proceedings was introduced, in which the prosecutor played the primary role, and the involvement of the judiciary and the rights of the parties were limited (*J. Koredczuk, 2016*).

It was only with the adoption of the new Code of Criminal Procedure that a path was opened for the introduction of a preparatory proceedings model that meets the standards of a democratic state governed by the rule of law. However, it should be noted that despite numerous changes, which should be evaluated positively, elements characteristic of the Soviet model remains in the Polish system (*P. Kruszyński, M. Warchoł, 2008*). There are also numerous other problems that have been highlighted for years, and despite subsequent amendments, they persist—issues such as the scope of preparatory proceedings,

[4] C. Kulesza, Przemodelowanie procesu karnego, https://www.gov.pl/attachment/063450d5-7475-4306-bdc6-3c70c0138f43 [acces 03.12.2024].

the roles and tasks of various authorities, and the speed of proceedings (*J. Grajewski, 2008 p. 89-96; J. Tylman, 2009, p. 125-144; J. Błachut, S.Majcher 2007, p. 67-149*).

It is important to emphasize that the changes occurring in the Polish model of preparatory proceedings are appropriate as they expand the scope of the court's actions. However, certain shortcomings remain evident. Following the Austrian model, the judge should have broader powers to conduct examinations, including interrogating the suspect. All decision-making actions that infringe on human rights and freedoms, such as searches or the monitoring of correspondence and shipments, should be reserved for the court. Consideration should also be given to expanding the range of supervisory actions.

The outlined model assumes the absence of a distinct judicial body responsible for actions in preparatory proceedings. As noted above, this does not preclude the actual role and effectiveness of the court. Legal traditions and historical conditions are crucial for shaping the model, as demonstrated by Austria and Poland. Ultimately, it must be acknowledged that practical procedural solutions shape the model of preparatory proceedings.

CONCLUSION

From the above analysis, it follows that the involvement of the judiciary in preparatory proceedings is obligatory in a democratic state governed by the rule of law. This is confirmed by international law as well as an extended analysis of the solutions adopted in various countries.

As indicated above, there are numerous possibilities for situating the court within the preparatory proceedings, depending on the chosen concept. It seems that the institution of the investigative judge, responsible for conducting preparatory proceedings, is in significant decline. However, it continues to exist in several countries, and although it diverges from its classical forms, it is not definitively determined that it will be completely abolished. While it has its merits, fulfilling its statutory tasks requires revision and adaptation.

The most effective solution appears to be the institution of the preparatory proceedings judge. Introduced in Germany 50 years ago, it replaced the investigative judge and fundamentally changed the nature of European preparatory proceedings. The German legislator identified elements of the model that required improvement and indicated the desired direction of changes. A unified preparatory proceeding was introduced, primarily led by the prosecutor, although in practice, most cases are handled by the police. Within this framework, a judicial component was incorporated, with a clearly defined role—primarily jurisdictional and supervisory, but with certain powers to conduct evidentiary actions in specific cases. This reform has been implemented in other countries over the years.

Criminal procedure theory also recognizes a solution that does not designate a specific body to carry out judicial actions but rather refers to the court acting as a single judge. This solution meets international standards but raises practical concerns. Specifically, the judge is ordinarily engaged in adjudication during judicial proceedings, and involvement in preparatory stage activities diverts them from their daily responsibilities. Consequently, it is difficult to speak of the judge's operational efficiency given their incidental participation.

*Nonetheless, each of the three discussed solutions fulfills the principle of judicial protection of human rights and freedoms. It is essential to identify the strengths and weaknesses of each model and strive to eliminate the latter. Criminal procedure must respond to contemporary challenges, prevent and combat crime. It seems that the police possess the best tools for this purpose, but they must simultaneously be supervised by the prosecutor and controlled by an independent judge***.**

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