

Discrepancies Between the Application of the Right of Defence and the Culture of the Criminal Process

Marta Kowalczyk-Ludzia

University of Warmia and Mazury in Olsztyn, Poland

Abstract. *The importance of ethical boundaries in the exercise of the right of defence has been written about for a long time. The defendants' use of the entitlement granted to them by the legislator (Article 6 of the Code of Criminal Procedure) should harmonise with respecting the culture of criminal proceedings. Meanwhile, as practice has demonstrated, the culture of ongoing proceedings often remains outside the required standards of the process. The use of so-called "evasive defence", assessment of participants to the proceedings through the prism of stereotypes, demonstrating offensive behaviour towards representatives of procedural bodies, or a superficial analysis of the evidence collected reinforce the negative perception of the course of proceedings, thus promoting inappropriate procedural patterns. Furthermore, these situations form the basis for the emergence of judicial mistakes, which usually leave a lasting mark on the further fate of the plaintiff in court. In accordance with theoretical assumptions, effectiveness in the exercise of rights of defence (Article 6 of the CCP) should correlate not only with the fundamental objectives of criminal proceedings (Article 2 of the CCP) but also with well-established assumptions that comply with the standards of diligence as broadly understood, along with the fulfilment of the procedural guarantees of the parties to the proceedings. This paper focuses on crucial issues related to the ethical boundaries of the exercise of the rights of defence. The issues discussed herein are supported by conclusions drawn from the analysis of the outcomes of case studies.*

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The right of defence is one of the fundamental rights of the defendant. This right is granted both statutorily (Article 6 of the Polish Code of Criminal Procedure¹) and constitutionally (Article 42 of the Polish Constitution²), and by international law (Article 6.3.c of the European Convention on Human Rights³ and Article 14.3.b of the

¹ Pursuant to Article 6 of the Polish Code of Criminal Procedure, the defendant has the right to defend himself and to use the assistance of a defence lawyer, of which s/he should be advised. — The Polish Act of 6 June 1997 — Code of Criminal Procedure, Journal of Laws / Dz. U./ of 1997, No. 89, item 555, as amended).

² According to Article 42.2 of the Constitution of the Republic of Poland, anyone against whom criminal proceedings have been brought, has the right to defend himself at every stage of proceedings. In particular, s/he may choose a defence lawyer in accordance with statutory provisions or use the assistance of a court-appointed defence lawyer. — Constitution of the Republic of Poland of 2 April 1997 adopted by the National Assembly on 2 April 1997, Journal of Laws /Dz.U./ 1997 No. 78, item 483, as amended.

³ According to Article 6.3.c of the European Convention for the Protection of Human Rights and Fundamental Freedoms — Everyone charged with a criminal offence has the minimum

International Covenant on Civil and Political Rights⁴). According to the above mentioned regulations, each defendant is authorised by the legislator to fully exercise the right of defence, which can be manifested both as material defence against charges and as formal defence by using the assistance of the defence lawyer.⁵

It should be noted that the above mentioned material defence is executed, among other things, by the "submission of requests for the taking of evidence, provision of arguments [...], and counterarguments against the content of the indictment."⁶

The above mentioned rights include the defendant's right to keep silent. According to case law, "refusal to testify or answer certain questions is the right of the defendant, thus the fact that he uses this right may not be regarded as an aggravating circumstance. Also, silence may not be interpreted as a plea of guilty or obstruction of proceedings."⁷ Although it is hard to negate these legitimate opinions, vital integral issues associated with this topic are often raised in the literature on the subject, and it is claimed that "the right of the defendant to keep silent does not imply his right to lie in proceedings, even though false testimony by the defendant is not punishable, according to criminal law."⁸

It can then be concluded that "defence in criminal proceedings is every behaviour intended to exercise this function in proceedings, including everything that is done to protect the interests of the defended individual."⁹ A similar understanding of this principle is presented by Kazimierz Buchała and Stanisław Waltoś, who claim that "the principle of the right of defence is a directive according to which the defendant has the right to defend himself in proceedings and to use the help of a defence lawyer."¹⁰

Execution of the right of defence (Article 6 of the Polish Code of Criminal Procedure) provides for respect for broadly understood human rights, and guarantees the defendant's right of voice and presenting to the criminal authorities his version of events. This law, which, as has been mentioned, exists both in Polish and international legislation, enables the defendant to individually oppose the charges made against him

right to: defend himself in person or through the legal assistance of his own choosing or, if s/he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require — European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, *Journal of Laws /Dz.U./ 1993, No. 61, item 284.*

⁴ Pursuant to Article 14.3.b — In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: to have adequate time and facilities for the preparation of his defence, and to communicate with counsel of his own choosing — International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, *Journal of Laws /Dz.U./ 1977, No. 38, item 167*

⁵ See: Prusak F, *Postępowanie karne. Wprowadzenie. Zasady procesu karnego*. Warsaw: Oficyna Wydawnicza Wyższej Szkoły Handlu i Prawa im. Ryszarda Łazarskiego, 2003, p. 270 and subsequent.

⁶ Buchała K, Waltoś S, *Zasady prawa i procesu karnego*. Warsaw: Państwowe Wydawnictwo Naukowe, 1975, pp. 297–298.

⁷ Judgement of the Supreme Court of 4 November 1977, V KR 176/77, OSNKW 1987, No. 1, item 7.

⁸ Prusak F, *op.cit.*, p. 275.

⁹ *Ibid*, p. 267.

¹⁰ Buchała K, Waltoś S, *op.cit.*, p. 297.

and gives him some impact on the decisions that affect him in proceedings. It is also rightly emphasised that the introduction of this right "is [...] of major significance for creating an atmosphere of social trust in the operation of the justice authorities and facilitates the re-socialisation of the convicted individual, who will find it easier to return to a righteous life if s/he is sentenced with due respect of all his rights."¹¹

However, the right of defence does not authorise the defendant to behave in the ways/he pleases during any of the stages of proceedings. The layout of the courtroom¹², the scenario of the hearing and the broadly understood culture of the courtroom require the observance of certain rituals, such as the order of speaking (Article 406 of the Polish Code of Criminal Procedure), hearing the sentence in a standing position (Article 418 of the Polish Code of Criminal Procedure), or submitting to the primacy of the presiding judge (Article 366 of the Polish Code of Criminal Procedure), etc.

Thus, it may be claimed, after Andrzej Murzynowski, that "the culture of proceedings is closely linked to strict observance of the law, high efficiency of the criminal authorities, the ability to detect crime and reveal material truth, good organisation of criminal proceedings with the use of modern technologies, respect for the various humanistic aspects of proceedings involving all the parties to proceedings (respect for their dignity and feelings, avoiding formalism, bureaucracy, excess rigour, etc.), and observance of aesthetic principles (the linguistic culture of court speeches, aesthetics of the courtroom, etc.)."¹³

The principle of material truth means that all decisions made in proceedings must be founded on established facts (Article 2 § 2 of the Polish Code of Criminal Procedure). On the other hand, the above postulations relate mainly to the effectiveness of proceedings, which should be conducted in full respect of the rights of the parties to proceedings, this way promoting the broadly understood culture of proceedings in society.

However, the development of the culture of proceedings is often based on stereotypes functioning in social psychology. It is believed, in association with the existence and functioning of stereotypes, that "[...] our certain emotions, evaluations and attitudes (readiness to perform certain actions) are a reaction not so much to one's own experience in a given area, but rather a word-designation that causes those feelings, evaluations and attitudes. It is transmitted to us, one way or another, by the society (the environment, the family), regardless of one's own experience in this respect, or sometimes even despite the lack of any experience."¹⁴

In order to avoid deceptions, the culture of proceedings also requires respecting the guarantee function of the criminal law. Thus, it is rightly claimed that the realisation of the said function "means [...] that the criminal law precisely defines which

¹¹ Murzynowski A, *Istota i zasady procesu karnego*. Warsaw: Wydawnictwo Naukowe PWN, 1994, p. 273.

¹² See: Regulation of the Polish Minister of Justice of 23 December 2015 The Rules of Procedure of General Courts, *Journal of Laws /Dz.U./* 2015, item 2316.

See also: Domachowski W, *Funkcjonowanie sali sądowej*, [in:] Habzda-Siwiek E, Kabzińska J (Eds), *Psychologia i Prawo. Między teorią a praktyką*. Sopot: Gdańskie Wydawnictwo Psychologiczne, 2014, pp. 195–203.

¹³ Murzynowski A, *op.cit.*, p. 132.

¹⁴ Schaff A, *Stereotypy a działanie ludzkie*. Warsaw: Wydawnictwo Książka i Wiedza, 1981, p. 38.

negative acts are offences and what punishment is associated with them. [...] This way, citizens are protected from the arbitrariness of the law enforcement authorities.¹⁵

In order to realistically evaluate criminal cases, it is also necessary to solve, beyond any doubt, various problems bordering social psychology. For example, "the first impression a defendant or witness makes [...], and also how the Police, lawyers, the jury and judges perceive the causes of the crime"¹⁶ are important.

In the light of the above discrepancies, it should be noted that, since maintaining the assumptions of the culture of proceedings is a complex task for the representatives of criminal authorities, the more so are some of its principles incomprehensible for defendants. Thus, defendants sometimes find it difficult to adapt to their new role, which is complex and at the same time unusual. Meanwhile, interpretation of the behaviour of defendants is, on the one hand, an important indicator in forecasting the indictability of the prohibited act and the defendant's future behaviour. On the other hand, it should be noted that, regardless of the defendant's behaviour, the principle of the presumption of innocence (Article 5 § 1 of the Polish Code of Criminal Procedure) obliges in particular the representatives of criminal authorities to avoid a deceptive interpretation of the defendant's behaviour and instead evaluate the events objectively. Besides, it must be remembered that "It is not in the suspect's interest to be associated with the event, and even if s/he admits to committing a crime, s/he naturally tries to reduce his guilt, to limit as much as possible the information on his involvement in the act and to minimise his responsibility or share in responsibility."¹⁷

Bearing this in mind, it should be noted that interpretation of the non-verbal behaviour of defendants not only requires careful attention, but it also implies the need to make logical associations between the behaviour of defendants and criminal events. The importance of the interpretation of non-verbal behaviour is often mentioned in the literature on the subject. It is emphasised that " [...] there exist two forms of communication: verbal and non-verbal. The first uses words and constitutes, according to different sources, between 7% and 35% of the entire communication process. Albert Mehrabian, a non-verbal communication psychologist, concluded that 93% of the emotional impact of communication comes from non-verbal sources and only 7% from verbal sources. On the other hand, Ray Birdwhistell claims that the ratio between words and the accompanying behaviour is 35–65%."¹⁸

In practice, the different behaviour of defendants has in many cases been useful in determining the traits of their character. When examining court files, I focused on those aspects that illustrated different reactions of defendants during trial. The

¹⁵ Buchała K, Waltoś S, *op.cit.*, p. 11.

¹⁶ Aronson E, Wilson T.D, Akert R.M, *Psychologia społeczna. Serce i umysł*. Poznań: Wydawnictwo Zysk i S-ka, 1997, p. 633.

¹⁷ Gruza E, *Psychologia sądowa dla prawników*. Warsaw: Oficyna a Wolters Kluwer business, 2009, p. 111.

¹⁸ Cecot A.K, *Wybrane zagadnienia komunikacji niewerbalnej w procesie karnym i kryminalistyce. Komunikacja niewerbalna w opinii policjantów*, [in:] Kasprzak J, Bryk J (Eds), *Prawo. Kryminalistyka, Policja. Księga pamiątkowa ofiarowana Profesorowi Bronisławowi Młodziejowskiemu*. Szczytno: Wydawnictwo Wyższej Szkoły Policji w Szczytnie, 2008, p. 170; *quotation after* Adler R.B, Rosenfeld L.B, Proctor R.F, II, *Relacje interpersonalne. Proces porozumiewania się*. Poznań, 2007, p. 143.

examination took place in the years 2015 and 2016 at the 2nd Criminal Division of the Regional Court in Olsztyn and the 2nd and 7th Criminal Divisions of the District Court in Olsztyn. All the cases I examined ended in the indictment of defendants. The cases presented below illustrate the different methods used by defendants in the execution of their right of defence (Article 6 of the Polish Code of Criminal Procedure). However, their use of those methods was often accompanied by emotional reactions that were hard to hide from judges.

In the first of the cases the defendant was accused, among other things, of domestic violence (Articles 207 § 1 and 190 § 1 of the Polish Criminal Code). During the trial, the Court repeatedly asked the defendant not to laugh at his wife's and son's testimony.¹⁹

In the second case, the defendant, shortly after the announcement of the judgement, threw an almost full 1.5 litre bottle of water at a news photographer, probably damaging a camera, and used offensive words addressed to court observers.²⁰

In the third case the defendant refused to testify, but at the same time he claimed with strong conviction that "I agree to plead guilty so as not to have to listen to the witnesses, who are my wife's acquaintances and who have not seen anything anyway." In the pre-trial procedure he also refused to speak about the criminal event. The defendant's wife firmly testified that: "My husband was aggressive and he kicked me in the stomach. He broke a finger on my right hand."²¹

In the fourth case the defendant pleaded guilty to the charge and testified according to what had been determined about the event during the pre-trial procedure. He was accused of stealing an identity card, a money box with PLN 2,000 in cash in it, and jewellery (Article 278 § 1 of the Polish Criminal Code). The defendant had agreed to redecorate the aggrieved party's apartment and had stolen the above valuables during their absence. In the pre-trial procedure, he testified: "I regret very much doing what I did, although I did not steal the identity card. I found it and wanted to return it. I sold the jewellery to get money."²²

In the fifth case the defendant consistently pleaded innocent to the charge against him. The case concerned, among other things, robbery (Articles 280 § 2, 64 § 2 and 193 of the Polish Criminal Code). According to the prosecutor, the defendant stole PLN 100 in cash from the aggrieved party. The offence was an act of recidivism. In the pre-trial procedure one of the defendants testified: "I plead innocent to the charge. I drank alcohol at the aggrieved party's place, but I neither beat him nor hurt him with a knife, nor took any of his money."²³

The defendants' behaviour in the trial is also often intended to shift criminal responsibility to other participants of the event. Such behaviour of defendants is difficult to evaluate, because representatives of criminal authorities must rationally distinguish between an unethical defence method adopted by the defendant and the veracity of the information provided by him. Henryk Kempisty is right to observe that "pleading innocent is not synonymous with elusive defence, and as such it may not cause a more severe sentence. Likewise, the sentence may not

¹⁹ Judgement of the District Court in Olsztyn — file No. II K 5/12.

²⁰ Judgement of the District Court in Olsztyn — file No. II K 149/12.

²¹ Judgement of the District Court in Olsztyn — file No. II K 634/12.

²² Judgement of the District Court in Olsztyn — file No. II K 448/12.

²³ Judgement of the District Court in Olsztyn — file No. II K 137/12.

be made more severe due to the fact that the defendant's behaviour obstructs the criminal procedure. Defence becomes elusive when it reveals a low moral level or the defendant's ill will, and then it may become an aggravating circumstance."²⁴

An example of such "elusive defence" is the following case: The case concerned domestic violence (Article 207 § 1 of the Polish Criminal Code). During the trial, the defendant testified: "The wife and daughter blocked my way in, standing in the doorway. I did not make any attempts to push them away from the door." On the other hand, the defendant's daughter testified that the mother, because of the father's behaviour, was planning suicide. A neighbour strongly denied hearing any sounds of a quarrel coming from the house of the defendant and the aggrieved party. During the pre-trial procedure the defendant emphasised the fact that his "Wife was angry that I was drunk. She attacked me and I defended myself, or maybe it was the other way round. It just happened."²⁵

As the above criminal cases show, different defence methods are accompanied by various emotional reactions. The non-verbal behaviour of defendants usually results from the numerous emotions they experience during the trial. Thus, even though the conduct of non-professional parties to proceedings is in some way justifiable, the representatives of criminal authorities are obliged to maintain "quiet and order" (Article 372 of the Polish Code of Criminal Procedure) in the courtroom. Mieczysław Szerer rightly observes that "the society cannot be expected to blindly believe that a robe with a purple band creates charisma accompanied by authority. It may be decided and enforced that all rise when the court announces the verdict, but no declaration can possibly make all heads bow with conviction to the words of the presiding judge announcing the verdict. This is what judges must earn again and again."²⁶

The culture of proceedings requires that judges be professional, and each time obliges them to perform a comprehensive, free (Article 7 of the Polish Code of Criminal Procedure) and unbiased (Article 4 of the Polish Code of Criminal Procedure) evaluation of events. Not being influenced by passive observers of proceedings guarantees compliance not only with the principles of proceedings (including, in particular, the principle of material truth — Article 2 § 2 of the Polish Code of Criminal Procedure), but also the goals established by the legislator (Article 2 § 1 of the Polish Code of Criminal Procedure). Notwithstanding the above, it should also be noted that "publishing in the media information about pending cases definitely affects the future verdict. [...] Even consciously acquired instructions to ignore any knowledge obtained by a judge from out-of-court sources concerning the case investigated by him cannot balance that impact."²⁷

The development of a correct and effective culture of proceedings is also hindered by premature judgements about defendants. The defence method (Article

²⁴ Kempisty H, *Metodyka pracy sędziego w sprawach karnych*. Warsaw: Wydawnictwo Prawnicze, 1955, p. 254.

See also: Muras Z, *Wyjaśnienia oskarżonego w procesie karnym i w prawie karnym materialnym*. Komentarz. Warsaw: Wydawnictwo C H Beck, 2005, p. 104 and subsequent.

²⁵ Judgement of the District Court in Olsztyn — file No. II K 469/12.

²⁶ Szerer M, *Kultura i Prawo*. Warsaw: Państwowy Instytut Wydawniczy, 1981, p. 111.

²⁷ Gorazda M, *Psychologia wyrokowania. Jak współczesna wiedza psychologiczna może oddziaływać na podstawowe zasady procesu sądowego?*, [in:] Habzda-Siwek E, Kabzińska J (Eds), *op.cit.*, p. 208.

6 of the Polish Code of Criminal Procedure), may be ineffective, but an unjustified assumption that defendants are criminals is contrary to the basic assumptions of the theory of the criminal procedure (Article 5 § 1 of the Polish Code of Criminal Procedure). It should be noted that "A person is not born predisposed to come into conflict with the criminal code. A person may manifest from early childhood certain features that suggest his lower somatic or psychological capacities, s/he may have an innate less effective heart or intellect, an unstable vegetative system and nervous hyperexcitability, but it is very unlikely that one is born with a strong inclination to commit crimes against persons or property that would force one to kill, forge or steal regardless of the environmental conditions, upbringing and financial situation that would make one very early in life incapable of correction."²⁸

The culture of proceedings should also serve the purpose of preventing future crimes (by perpetrators) and engagement in criminal activity by members of the society with a clean criminal record.²⁹

It is also worth noting here that the right selection of the scope and method of defence is significantly hindered by court errors that contradict the culture of proceedings. Thus, it is important to "determine the sources of court errors, and awareness of them is crucial for criminal authorities to reduce the number of wrongful convictions. Errors are usually caused not by individual mistakes, but rather by a series of circumstances."³⁰

The factors that negatively affect the propagation of the culture of proceedings are usually articulated in appeals filed by prosecutors or defence attorneys. The existence of relative (Article 438 of the Polish Code of Criminal Procedure) or absolute grounds for appeal (Article 439 of the Polish Code of Criminal Procedure) makes it possible to prevent erroneous court decisions, thus making proceedings more effective, at least at the stage of the appeal procedure.

Concerning errors in proceedings, I noticed, when examining the case files, among other things, the following defaults: — The case concerned driving a motor vehicle under the influence of alcohol (Article 178a of the Polish Criminal Code). According to the defence lawyer, misinterpretation of events resulted in too severe a sentence (Article 438 (3) and (4) of the Polish Code of Criminal Procedure). The defence lawyer claimed, among other things, that: "Even though it is beyond any doubt that the incriminated behaviour of the defendant is essentially disrespectful of the existing governance, at the same time it should be noted that the offence, reprehensible as it is, is not in any way more grave or exceptional compared to similar cases, and as such it does not justify a higher than minimal statutory ban on driving motor vehicles."³¹

²⁸ Batawia S, *Wstęp do nauki o przestępcy. Zagadnienie skłonności przestępczych*. Wrocław: Zakład Narodowy imienia Ossolińskich, Wydawnictwo Polskiej Akademii Nauk. Warsaw, Kraków, Gdańsk, Łódź, 1984, pp. 80 — 81.

²⁹ The development of moral responsibility is discussed at length by T. Jaśkiewicz — Obydzińska in the paper: Gierowski J.K, Jaśkiewicz — Obydzińska T, Najda M, *Psychologia w postępowaniu karnym*. Warsaw: Wydawnictwo LexisNexis, 2008, p. 21 and subsequent.

³⁰ Wójcikiewicz J, *Temida pod mikroskopem. Judykatura wobec dowodu naukowego 1993 — 2008*. Toruń: Wydawnictwo Dom Organizatora TNOiK, 2009, p. 257.

³¹ Appeal of the defence attorney to the Judgement of the District Court — file No. VII K 91/12.

— The case concerned murder (Article 148 § 1 of the Polish Criminal Code)³². According to the plaintiffs, the principle of unbiased assessment of evidence (Article 7 of the Polish Code of Criminal Procedure) was violated. In their respective appeals, both the defence lawyer and the prosecutor and subsidiary prosecutor claimed that the Court had made a mistake when determining the facts (Article 438 (3) of the Polish Code of Criminal Procedure). As a result of the appeals, the Court of Appeal, in the justification of the verdict waiving the judgement of the Court of the First Instance stated, among other things, that:

— “The justification of the judgement that is the object of the appeal suggests that the Court assessed the evidence in a one-sided way, which led the Court to false conclusions by making reference to Article 7 of the Polish Code of Criminal Procedure. [...] It cannot be denied that the prosecutor’s arguments in this part constitute the correct interpretation of the city monitoring system recordings. See Judgement of the Court of Appeal in Wrocław of 25 July 2002, II Aka 209/12 LEX 1216436). [...] It seems that the Regional Court paid too much attention to the testimony of the defendant and the account of the witnesses, who claimed they had not seen the second defendant hold a knife or stab the victim.”³³

— The case concerned beating the aggrieved party, a resident of a social house in Olsztyn (Articles 193, 191 § 1 and 11 § 2 of the Polish Criminal Code). The defendant was accused of unlawfully entering the apartment, cursing in a vulgar way, hitting the aggrieved party in the face and demanding her phone. A fight ensued. The defence attorney claimed there had been a mistake in the determination of facts (Article 438 (3) of the Polish Code of Criminal Procedure), among other things, that: “The aggrieved party’s testimony is not credible, because she did not see the attacker’s face and her testimony is incoherent, and there is no physical examination report confirming her injuries, and there are no injuries to the defendant’s hands.”³⁴

The review of the above cases shows court mistakes noticed by, and important for, the complainants. Those mistakes certainly contradict the requirements of the culture of proceedings. Effective defence, notwithstanding its nature, integrally fits into the reality of lawful proceedings that equalises the chances of defendants to receive a fair verdict. Importantly, the aim of proceedings is to “identify the culprit rather than to punish no matter whom.” Thus, a defendant should be regarded as an innocent person, and it has yet to be verified whether he is not so that the indications and evidence that speak against him are false or only apparently suggest his guilt. Thus, the defendant’s guilt must not be prejudged, nor may his efforts to defend himself against charges be treated as an attempt to evade justice and the punishment s/he deserves.”³⁵

Nonetheless, observance of the ethical limits of the law also requires respecting the culture of proceedings. This requirement concerns not only the defendants and their attorneys, but also the representatives of criminal authorities. The numerous

³² Judgement of the Regional Court — file No. II K 149/12.

³³ Judgement of the Court of Appeal in Białystok — file No. II Aka 47/13.

³⁴ Appeal to the Judgement of the District Court — file No. VII K 212/12.

³⁵ Mazur M (Ed.), Bafia J, Bednarzak J, Flemming M, Kalinowski S, Kempisty H, Siewierski M, Kodeks postępowania karnego. Komentarz. Warsaw: Wydawnictwo Prawnicze, 1971, p. 12.

deliberations in the literature on the subject³⁶ concerning the defaults of criminal authorities prove that the standards of the culture of criminal proceedings is not respected, resulting in a negative social perception.

Bearing the above in mind, it should also be noted that the doctrine of the criminal procedural law has not yet developed uniform models of effective defence that would respect in an unquestionable way the culture of proceedings. Thus, it is rightly claimed that "It is hard to determine, in theoretical deliberations, precise, infallible and entire limits of the right of defence, the same as it is difficult to theoretically identify all the situations where the right of defence is confronted with other legally protected values."³⁷

The above assumption is not questioned. However, it is emphasised that elusive defence³⁸, deceiving or obstructing proceedings are examples of how the assumptions of the culture of proceedings, in the broad meaning of the term, are contradicted. Even if "the law enforcement authorities, having some information about an event, are determined to identify the culprit. If their work is effective, it can be said that the quality contributed to achieving or partly achieving the goal."³⁹, then the above assumption concerning maintenance of the standards of the culture of proceedings may not limit the execution of the right of defence (Article 6 of the Polish Code of Criminal Procedure), nor allow for the transgression of its ethical limits.

To conclude, it is emphasised that the maintenance of the culture of criminal proceedings is a vital element of just and diligent proceedings. Assuming that "the achievement of educative effects towards culprits as well as towards broader social circles is the general task of Justice, which is implemented both through the application of the provisions of the material criminal law and through the work of the criminal authorities throughout the criminal process and the enforcement process"⁴⁰, then the impact of Justice on both the defendants and the other parties to proceedings, and the audience, is effective only if the propagation of the culture is founded on observing lawful standards of conduct and reacting to any deviations in the application of the principles of proceedings, in particular the right of defence (Article 6 of the Polish Code of Criminal Procedure).

³⁶ For example, Henryk Kempisty believes that: "An analysis of court practice suggests that many of our courts still fail to prepare for the main trial in a proper and diligent way." Kempisty H, *Metodyka pracy sędziego (...), op.cit.*, p. 254.

See also: Gurgul J, *Ocena dowodów w postępowaniu przygotowawczym*, [in:] *Prokuratura i Prawo*, No. 9/2001, p. 136 and subsequent.

³⁷ Wiliński P, *Zasada prawa do obrony w polskim procesie karnym*. Kantor Wydawniczy Zakamycze, 2006, p. 442.

³⁸ Case law also suggests that the fact that a person tries to shift penal responsibility to others in order to reduce his own share in a prohibited act deserves a more severe sentence — see the Court of Appeal in Kraków, judgement dated 1 July 2004, II Aka 128/04.

³⁹ Juszka K, *Relacja między jakością a efektywnością czynności kryminalistycznych*, [in:] Kaspzrak J, Bryk J (Eds), *op.cit.*, p. 111.

See also: Article 297 § 1 (1) of the Polish Code of Criminal Procedure. — The Polish Act of 6 June 1997 — Code of Criminal Procedure, *Journal of Laws /Dz. U./ of 1997, No. 89, item 555, as amended.*

⁴⁰ Murzynowski A, (...), *op.cit.*, p. 129.

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About the author

Marta Kowalczyk-Ludzia, PhD — Doctor of law, assistant professor in Criminal Proceedings Department at University of Warmia and Mazury in Olsztyn, head of the postgraduate studies in Electronics Administration, in years 2015 — 2016, as a trainer, she conducted a nationwide project co-organised by the Ministry of Justice entitled “School education against legal exclusion”. Research interests: criminal proceedings and related issues.

Streszczenie. O wadze etycznych granic w realizacji prawa do obrony pisze się od dawna. Korzystanie przez oskarżonych z nadanego im przez ustawodawcę uprawnienia (art. 6 k.p.k.) współgrać powinno z jednoczesnym zachowaniem poszanowania kultury postępowania karnego. Tymczasem, jak dowodzi praktyka, kultura toczących się procesów nieraz pozostaje poza wymaganymi standardami procesowania. Stosowanie tzw. „obrony wykrętej”, ocenianie uczestników postępowania przez pryzmat stereotypów, prezentowanie obraźliwych zachowań względem przedstawicieli organów procesowych czy pobieżne analizowanie zebranego materiału dowodowego — utwierdzają w negatywnym postrzeganiu przebiegu postępowania, krzewiąc tym samym niewłaściwe wzorce procesowe. Przedstawione sytuacje stają się także podstawą powstania sądowych pomyłek, które wywierają zwykle trwale piętno na dalszych losach procesowych podsądnego. Zgodnie z teoretycznymi założeniami, efektywność w realizacji prawa do obrony (art. 6 k.p.k.) korelować powinna nie tylko z fundamentalnymi celami postępowania karnego (art. 2 k.p.k.), ale również z ugruntowanymi założeniami spełniającymi standardy szeroko pojętej rzetelności, wraz ze spełnieniem gwarancji procesowych stron postępowania. Niniejsze opracowanie oscyluje wokół ważkich zagadnień związanych z etyczną granicą realizacji prawa do obrony. Omówione kwestie wsparto wnioskami pochodzącymi z analizy wyników przeprowadzonych badań aktowych.

Резюме. *О значимости этических границ обеспечения права на защиту пишут с давних пор. Возможность обвиняемого пользоваться правом, предоставленным ему законодателем (ст. 6 УПК), должна совпадать с одновременным соблюдением культуры производства по уголовному делу. Тем временем, как показывает практика, культура ведения судебного процесса часто не соответствует требуемым стандартам. Использование противоречащих закону средств защиты для охраны интересов обвиняемого, оценка участников процесса на основе стереотипов, оскорбительное поведение по отношению к представителям органов, осуществляющих правосудие или безлого анализа доказательств усиливают негативное восприятие проведения разбирательства, тем самым распространяя неправильные стандарты в сфере уголовного судопроизводства.*

Вышеупомянутые ситуации также являются причиной судебных ошибок, которые обычно устойчиво влияют на дальнейшую судьбу подсудимого. Согласно теоретическим предположениям, эффективность реализации прав защиты (ст. 6 УПК) должна коррелировать не только с основными целями уголовного судопроизводства (ст. 2 УПК), но и с укрепленными принципами, которые соответствуют стандартам широко понимаемой порядочности с одновременным выполнением гарантий всех сторон производства.

Данная работа касается важных вопросов, связанных с этической границей реализации права на защиту. Обсужденные вопросы подкрепляются выводами, полученными в рамках анализа результатов, вытекающих из проведенных исследований.

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