

# PRESENCE OF A THIRD PARTY DURING PROCEDURAL ACTS IN PREPARATORY PROCEEDINGS INVOLVING A SUSPECT

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## ABSTRACT

The article analyses a new regulation in Polish criminal procedure. The Act of 14 April 2023, amending the Code of Criminal Procedure introduced a new right for the suspect, i.e. the possibility of the presence of a legal representative, actual guardian, or a person indicated by a minor suspect during a procedural act in preparatory proceedings involving the suspect. That person shall have the status of a third party who, although not usually a party to the proceedings, functions as a special person of trust. Despite some reservations concerning certain elements of this regulation, it deserves appreciation, as it is aimed at strengthening the protection of the suspect's interests and guaranteeing the proper conduct of procedural acts.

Key words: suspect, minor, protection, preparatory proceedings, procedural acts

## ORIGIN OF THE REGULATION

Admitting third parties to criminal proceedings involves allowing these persons to be present during the performance of the relevant procedural act. Most often, this presence is limited to a passive form, meaning no possibility of acting in a way that would affect the course or outcome of the act. It is generally motivated by the need to ensure the correctness of the procedural acts being carried out or to protect the interests of the participant involved in them.

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The analysis of the provisions of the Code of Criminal Procedure allows us to state that the legislator – for the above reasons – is gradually expanding the scope of regulations allowing third parties to participate in procedural activities. As a result of the Amending Act of 2023,<sup>1</sup> a new Article 299b was added to the Code of Criminal Procedure. It provides for the possibility of the presence of a legal representative, a person exercising custody over the suspect, or an adult person indicated by the suspect during activities involving a suspect who is under 18 years of age, carried out in preparatory proceedings. The justification for the draft April Amendment indicated the need to implement Article 15(4) of the Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.<sup>2</sup> According to this provision, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult nominated by the child and accepted as such by the competent authority during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that: it is in the child's best interests to be accompanied by that entity or person, and the presence of that entity or person will not prejudice the criminal proceedings. It was rightly emphasised in the justification of the April Amendment that the provisions of the Code of Criminal Procedure did not provide for the presence of persons other than statutory representatives in preparatory proceedings involving the suspect, with statutory representatives being referred to only in Article 316 § 1 of the Code of Criminal Procedure (CCP), which, incidentally, applies only to exceptional activities. In the period preceding the entry into force of Article 299b CCP, the possibilities of admitting specific persons of trust to the indicated investigation or inquiry activities were therefore very limited. The new provision of Article 299b is also part of a broader package of amendments aimed at replacing the term 'minor' with a wording referring to an accused or suspect who is under 18 years of age, as the above-mentioned Directive uses the concept of 'child', defining a child as a person under the age of 18 (Article 3(1) of the Directive).

## ESSENCE AND PURPOSES

Certainly, the provision of Article 299b CCP serves to protect the interests of the suspect. A more detailed specification of the type of interests subject to protection is already difficult. However, defining the essence and objectives of the discussed regulation is not possible without a preliminary attempt to determine the legal status of the person present during the procedural activity. This issue is the starting point for a proper explanation of the general conditions of this regulation.

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<sup>1</sup> The Act of 14 April 2023 amending the Code of Criminal Procedure and Certain Other Acts, Journal of Laws of 2023, item 818, hereinafter 'the April Amendment'.

<sup>2</sup> OJ L 132, 21.5.2016, p. 1. For arguments concerning persons with intellectual disabilities see K. Girdwoyń, 'Prawo do odpowiedniej reprezentacji oskarżonych z niepełnosprawnością intelektualną', *Ius Novum*, 2020, No. 3, pp. 67 et seq.

Meanwhile, even a cursory analysis of Article 299b CCP proves that the legislator did not apply a solution identical to that which concerns the victim, as provided for in Article 299a § 1 CCP. According to the latter provision, during activities involving the injured party in preparatory proceedings, a person indicated by the injured party may be present, provided that this does not prevent the activity from being carried out or significantly hinder it. In Article 299b CCP, the legislator allowed other persons to participate in preparatory proceedings in a more extensive manner. The range of entities that may participate in activities involving the suspect is broader and, in addition, the prevention of activities is based on a wider set of premises than in the regulation relating to the victim.

Article 299b CCP refers to the statutory representative of the suspect and the person under whose care the suspect remains. These entities have the status of procedural representatives of the accused (suspect). They may undertake all procedural activities on his behalf (Article 76 CCP). This fact could clearly suggest that they cannot be present during activities involving the suspect merely as neutral observers, because they have the status of procedural participants and, moreover, are authorised to perform procedural actions. When the indicated entities cannot be present during the activities (for reasons discussed below), the suspect has the right to indicate another adult person. In this case, the thesis about admitting a third party to the procedural activities becomes justified, i.e. one who is not a participant in the criminal proceedings and does not take part in the process in a role defined by the regulations. After all, the indicated provision does not grant this person any rights or obligations. This, in turn, suggests that their role is passive, i.e. it consists of providing support during the procedural activity carried out with the participation of the suspect.

At this point, it should be recalled that presence is not the same as participation. Presence means a passive attitude, consisting solely of observing the course of the activity. Participation assumes adopting a stance involving direct or indirect engagement in the course of a given activity (e.g. providing explanations, statements, motions, or asking questions by the party or its representative). This dichotomy is confirmed by the legislator in the regulation of Article 299a § 1 CCP, reserving the form of presence for a third party and the form of participation for the victim.<sup>3</sup>

In the case of the regulation of Article 299b CCP, the correct qualification of the form of involvement of a third party in the activity was not made easier. While the 'presence' of the statutory representative or actual guardian is mentioned first, later – when discussing the occurrence of circumstances excluding the statutory representative or actual guardian from the activity – the term 'participation' is used twice. It is also used in relation to the premises excluding another adult person. Perhaps this inconsistency should not be given too much significance, as it may have been a matter of linguistic correctness, adapted to the stylistic constructions applied. However, the impression of confusion remains.

It can therefore be argued that, in Article 299b CCP, there is a dualistic stratification, consisting in the fact that the statutory representative or actual

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<sup>3</sup> R. Koper, 'Obecność osoby wskazanej przez pokrzywdzonego podczas czynności procesu karnego z jego udziałem', *Monitor Prawniczy*, 2016, No. 22, p. 1194.

guardian takes part in the activity, because such a possibility results from the nature of their procedural status, while another adult person can only be present, since, not being a participant in the proceedings, they cannot influence the course or outcome of the activity. The thesis that this other adult person exercises the right to be present during the activity is further confirmed by the content of Article 76a § 1 CCP. This provision provides for an analogous legal solution, applicable in court proceedings, during a main trial or session. The grounds for excluding this person from the activity are clearly linked there to their presence.

However, it seems that the above-presented method of argumentation is not accurate. It would be difficult to rationally justify such differentiation. It would mean an uneven scope of protection for suspects participating in procedural activities. A suspect who uses the assistance of a statutory representative or actual guardian could rely on their active participation during the activities. A suspect who does not have a statutory representative or actual guardian, or has one but cannot use their assistance due to circumstances preventing their participation in the activities, could expect only the silent presence of another adult. This would indicate a weaker procedural position for suspects belonging to the second group.

In an attempt to resolve the issue under consideration, it is ultimately necessary to refer to a systemic and teleological interpretation. The provision of Article 299b CCP is located after the provision of Article 299a § 1 CCP, which – as noted above – regulates the presence of a third party indicated by the victim during preparatory proceedings. This fact clearly suggests that Article 299b CCP regulates an analogous situation in relation to all entities indicated therein. In addition, it cannot be overlooked that Article 299b CCP concerns a suspect who is under 18 years of age, and therefore a person susceptible to harm or requiring special protection. For this reason, the scope of entities admitted to activities involving such a suspect had to be shaped in a broader way than in the case of the injured party as such, and in a way adequate to the factual and legal situation of a minor suspect. As a result, it is logical to assume that the content of Article 299b CCP entitles the statutory representative or actual guardian only to be present during the activities, which does not deprive these entities of the possibility of actively acting on behalf of the suspect in other procedural situations. This assumption is also compatible with the above-mentioned Article 15(4) of the EU Directive. It should therefore be recalled that this provision refers to the child being accompanied by the entity holding parental responsibility or another person, and even literally emphasises the presence of these entities.

To sum up this part of the considerations, it should be assumed that each entity authorised under Article 299b CCP to participate in a procedural act exercises its right through its presence during its performance. After all, it does not become the subject of the act, because it does not acquire additional rights by doing so.<sup>4</sup> As a result, it cannot ask questions of the suspect or any other person, speak on issues that are the subject of the act, make procedural statements, etc. Furthermore,

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<sup>4</sup> M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania karnego. Komentarz. Art. 1–424*, Vol. I, Warszawa, 2024, p. 1077. The legislative recitals of the April Amendment also clearly and explicitly state that each of the entities authorised under Article 299b of the Code of Criminal Procedure has the right to be present.

this entity does not have the right to independent presence in the sense that its presence is directly dependant on the participation of the suspect – as a party – in the procedural acts in the preparatory proceedings. It can only appear alongside the suspect, and never in their place. In this context, it seems justified to use the term ‘third party’, because even if the person has the status of a participant in the process, their role during the act referred to in Article 299b CCP, in the procedural sense, is entirely passive. There is nothing to prevent this person from providing verbal advice or support to the suspect, provided this does not disrupt the proper course of the activity.

However, it does not seem that a ‘person selected’ was created within Article 299b CCP.<sup>5</sup> This term (also known as a ‘witness selected’) is understood to mean a person who has been appointed to participate in a specific procedural activity in order to ensure that the activity is conducted correctly.<sup>6</sup> A good example in this respect is the premises search. According to Article 224 § 2 CCP, regardless of the presence of the person whose premises are being searched, the person selected by the authority conducting the activity has the right to be present, as does the person indicated by the person whose premises are being searched, if this does not prevent the search or hinder it in any other way. A witness selected is therefore a person indicated by the procedural body or another participant in the process, but at the same time for the purpose of ensuring the proper conduct of procedural activities.

As follows from Article 299b CCP, the status of a third-party observer is not necessarily determined by the indication made by the suspect. They may take the initiative in this respect only in relation to ‘another adult person’. Naturally, however, they have no choice when it comes to allowing a legal representative or a *de facto* guardian to act. In this respect, one can even speak of a kind of statutory priority, largely independent of the opinion of the procedural body.

It is also problematic whether the presence of a third party in this case is connected with guaranteeing the legality of the act. Even a cursory analysis of the content of the indicated provision allows us to conclude that its purpose is to protect the rights and interests of the suspect. After all, the young age of the perpetrator and the statutory reference to the impossibility of participation by a person whose presence may lead to the violation of the suspect’s rights or interests, or would be inappropriate for their well-being, indicate that the presence of a third party is to provide the suspect with support and a sense of security. There may also be a need for educational influence on the suspect in order to guarantee their proper development, particularly from a psychological and social perspective. It cannot be ruled out that, in certain cases, regardless of the fact that the suspect committed the offence, they will express remorse and sincerely admit guilt, and their participation in procedural acts will be a source of specific difficulties and negative internal experiences for them (a sense of shame, low self-esteem, alienation, etc.). Then, the presence of a third party – when it is the person closest to them, or at least not

<sup>5</sup> Differently: *ibidem*.

<sup>6</sup> E.g., M. Chiavario, *Diritto processuale penale. Profilo istituzionale*, Torino, 2007, p. 204; P. Corso, *Commento al codice di procedura penale*, Piacenza, 2008, p. 529; K. Marszał, *Proces karny. Zagadnienia ogólne*, Katowice, 2013, p. 394.

holding such status but emotionally close, friendly, and inspiring trust – will serve to eliminate these negative experiences and inconveniences for the suspect.

Therefore, while on the basis of the regulation in Article 299a § 1 CCP it is equally about not only protecting the interests of the victim but also ensuring the proper course of procedural activities (and consequently, the person indicated by the victim is a qualified, special form of a witness selected),<sup>7</sup> the specificity of the regulation in Article 299b CCP is more complex. The fact that the suspect is a minor, combined with the need to protect their rights and interests, means that the primary protected value here is precisely that protection, and the third party does not obtain the status of a witness selected.

There seems to be no obstacle to assuming, however, that the mobilising influence of this person on the procedural body in terms of ensuring the legality of the action being carried out cannot be excluded. We could then speak of secondary protection – i.e. protection that does not constitute the *raison d'être* of the regulation in question but cannot be ignored, as it may be fulfilled while protecting the suspect. In such a case, the third party may also serve as a kind of person of trust, whose role is to ensure that the provisions concerning the conditions and procedure for carrying out a given action are observed. In this context, their presence may also prevent the raising of unjustified complaints or allegations concerning the performance of the action.

To sum up: the presence of a third party is primarily intended to have a positive effect on the situation of the suspect, but at the same time (although in a secondary role), it may stimulate the procedural body to exercise maximum diligence when carrying out the action.

## CONDITIONS FOR APPLICATION

The conditions of the regulation in question are the grounds enabling its application. In this matter, it is necessary to specify the positive and negative conditions. In turn, three conditions can be identified in the group of positive conditions.

Firstly, the right under Article 299b of the CCP may be exercised by an entity that is a suspect, and therefore meets the conditions specified in Article 71 § 1 CCP. It must be a suspect who has not reached the age of 18. This group includes a perpetrator subject to criminal liability in exceptional situations specified in Article 10 § 2 and 2a of the Criminal Code, if they committed a prohibited act after reaching the age of 15 or 14, respectively. Of course, this also includes a perpetrator who committed a prohibited act after reaching the age of 17 but before reaching the age of 18. In this case, the following question is important: is it decisive that the person was under 18 at the time of performing a given act, or at the time of committing the crime? If the latter option were adopted, Article 299b CCP would also apply to suspects who were minors at the time of committing a crime, but had already turned 18 before the date of a specific procedural act. This solution would be contrary to the idea

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<sup>7</sup> Thus, for instance, K.T. Boratyńska, P. Czarnecki, R. Koper, in: Sakowicz A. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2023, p. 882; R. Koper, 'Obecność...', op. cit., p. 1195.

and purpose of the regulation in question. Therefore, Article 299b CCP refers to a suspect who was under 18 on the date of the given act.<sup>8</sup>

Secondly, the scope of application of this regulation has been directly limited to preparatory proceedings. In this context, a systemic interpretation results from the inclusion of Article 299b in Section VII CCP, 'Preparatory Proceedings', and the fact that a separate provision (Article 76a CCP) provides for an analogous possibility at the stage of court proceedings. The reservation of the presence of a third party in preparatory proceedings allows for the application of Article 299b CCP in relation to activities taking place from the moment of initiation of such proceedings. It is necessary to take into account both initiation by issuing a decision to that effect (Article 303 CCP) and by conducting an inquiry to the necessary extent (actual initiation of preparatory proceedings – Article 308 CCP). There are no obstacles to Article 299b CCP covering judicial activities in preparatory proceedings (Chapter 38 CCP). These are still activities located within the structure of preparatory proceedings; only the entity carrying out the given activity changes.

Thirdly, these must be activities involving the suspect within the meaning of Article 299b CCP. This means limiting the application of this provision to activities in which the suspect participates as a party, and therefore activities with their actual participation, excluding those in which they have the right to participate but do not.<sup>9</sup> In principle, there are no restrictions on the type of activities in preparatory proceedings at which a third party may be present. These may be activities dedicated to the suspect, i.e. with their main participation, as well as other activities in which their participation results, at least, from the procedural initiative of the defence counsel. Therefore, they may include identification, medical and psychological examinations (Article 74 § 2 CCP), non-repeatable activities (Article 316 CCP), interrogation of an expert (Article 318 CCP), or other activities pursuant to Article 317 CCP. It cannot be denied that the suspect's minority may sometimes render their participation in the activity pointless.

It is no accident that interrogation is missing from this list. It is not clear whether it falls within the scope of the regulation of Article 299b CCP. The reason for this doubt arises from the current content of Article 171 § 3 CCP. According to this provision, if the person interrogated is under 18 years of age, activities involving them should, to the extent possible, be conducted in the presence of a statutory representative, actual guardian or an adult indicated by the person interrogated, unless the good of the proceedings prevents this or the person interrogated objects thereto.

As can be seen, this provision applies to all persons subjected to interrogation, including the accused (suspect). Confirmation of this thesis results not only from grammatical and systemic interpretation, but also from the explicit mention in Article 171 § 9 CCP, where – in the context of Article 171 § 3 – the suspect and the witness are directly indicated. The scope of application of Article 171 § 3 CCP is therefore limited, referring to interrogation, while the regulation of Article 299b covers all activities of preparatory proceedings. On the one hand, this fact could

<sup>8</sup> See also M. Kurowski, in: Świecki D. (ed), *Kodeks postępowania...*, op. cit., p. 1076.

<sup>9</sup> Ibidem.



suggest that the latter provision is of a *lex generalis* nature, while the former, regulating only one possible activity, concerns a fragmentary situation and therefore constitutes a special norm. This would mean that, in the part concerning the interrogation of the suspect, Article 299b CCP does not apply. On the other hand, this concept may be subject to reconsideration. After all, Article 171 § 3 CCP concerns interrogation in both preparatory and court proceedings. By contrast, Article 299b, if we were to assume its application to interrogation, considers this activity only within the framework of preparatory proceedings. In this arrangement, Article 299b could be interpreted as *lex specialis*. The fact remains that Article 171 § 3 seems to be better adapted to the specifics of interrogation when it comes to negative premises. One of them is the interest of the proceedings, understood in such a way that the presence of a third party may have a negative impact on the explanations or testimony of the person interrogated, which in turn may hinder the proper clarification of the circumstances of the case (implementation of the principle of truth). On the other hand, it is also possible to defend the thesis that the fear of preventing or significantly hindering questioning – within the meaning of Article 299b – in terms of protection against the negative influence of a third party on the person being interrogated is not without functionality. The scope of such premises may include the concern that the third party could negatively influence the suspect's freedom of expression.<sup>10</sup>

The problem under consideration is exceptionally difficult to resolve. A more favourable view is evoked by the possibility of including interrogation within the scope of Article 299b CCP. This thesis is expressed very cautiously, because the opposite interpretation is also supported by strong arguments. In any case, it is clearly evident that the issue has been regulated by the legislator in a confusing, unclear, and non-transparent manner.

As for the negative premises, they concern persons who may be present during activities involving the suspect. They are common to all such entities.

The first premise is that the presence of a third party during a given activity may lead to a violation of the suspect's rights or interests. This circumstance is subject to objective verification, carried out in the context of the suspect's right to defence or other rights. It is not necessary to determine the actual influence, because, since the legislator used the term 'may lead', he clearly indicated that it is sufficient to determine the potential (hypothetical) influence. This premise will occur, for example, in a situation where it is known that a legal representative has grossly neglected their duties towards a child who currently has the status of a suspect. Another example concerns a case where the victim is one of the suspect's parents, and in such circumstances the presence of the other parent during the proceedings could have a negative impact on the suspect's procedural situation. If one of the parents present during the proceedings shows solidarity with the parent who has the status of victim, and has a negative or even hostile attitude towards their child – the suspect – they may influence the suspect in various ways (persuasion, manipulation, etc.), as a result of which the suspect's situation will not improve (also in terms of the scope of their criminal liability), or may even worsen.

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<sup>10</sup> R. Koper, 'Obecność...', op. cit., p. 1198.



The second negative condition concerns the determination that the presence of a third party is inappropriate for the best interests of the suspect. One should probably refer here to the suspect's psychological well-being, which is connected with the need to ensure the suspect's proper development. A threat to their well-being may arise when the third party exerts a negative influence on the suspect, causing a state of demoralisation or deepening it, instead of providing the necessary educational impact. In addition, there may be concern about a depressing or suggestive effect arising from this person's presence. It should be agreed that this condition may be fulfilled when it is known that the presence of a third party would not support the suspect – if only because of their helplessness resulting from developmental level, state of health, or other characteristics and personal circumstances.<sup>11</sup> Also, in relation to this condition, a situation involving a suspect who has committed a crime to the detriment of one of the parents may arise. When the parent who is not the victim feels a serious dilemma about how to respond to the situation, a conflict of interests is clearly revealed. As a result, their presence will negatively impact the suspect's well-being.

The third condition is related to the need to ensure the smooth conduct of preparatory proceedings. This is more in the public interest (the broadly understood interest of justice). It concerns the determination that the presence of a third party prevents the performance of the activity or significantly hinders it. Incidentally, the same circumstances exclude the person appointed from activities involving the victim (Article 299a § 1 CCP). A third party may, therefore, have a negative impact on the course of a given activity, though not necessarily on the proceedings as a whole. This may be a situation in which the application of Article 299b CCP is impossible due to difficulties in establishing contact with the authorised person. Sometimes this impossibility results from the nature of the activity itself, e.g. where the activity is urgent in nature, while the person mentioned above would only arrive after a significant delay. There may also be concern that the third party could seriously hinder the activity, resulting from their previous participation in the proceedings as a statutory representative. A negative attitude of the statutory representative or actual guardian towards the entire proceedings is also significant. The condition under consideration may prove useful when the procedural body intends to conduct an activity with the participation of a person indicated by the suspect (e.g. this is a person who will testify as a witness regarding the factual circumstances of the crime committed).

## MODE OF ADMISSION OF THE THIRD PARTY

The rules for admitting a third party to preparatory proceedings vary depending on the group of entities authorised in this matter.

The first group comprises the legal representative and the person under whose care the suspect remains. They have priority in terms of the possibility of

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<sup>11</sup> B. Skowron, in: Dudka K. (ed.), *Kodeks postępowania karnego. Komentarz*, LEX, 2023.

participating in activities involving the suspect. This is understandable, as these are individuals exercising parental authority or care over the suspect. Usually, the suspect has a strong emotional bond with them; these individuals are closest to him (in the colloquial sense), and therefore they are natural candidates in terms of providing psychological comfort. Their presence can have a calming effect on him.

Article 299b CCP states that the presence of a statutory representative or actual guardian is optional ('may be present'). As a result, the procedural body has not been given the right to decide independently on the presence of these persons. The decision in this respect belongs to the statutory representative and actual guardian, who will often be best informed about the existence of such a need. Provided there are no negative premises excluding the participation of these persons in the activity, the procedural body should admit them and allow them to observe the course of the activity. It is obvious that the relevant competence is vested in the body conducting the given activity (prosecutor, Police, court, etc.). It should be agreed with the doctrine<sup>12</sup> that, in the event of admitting a statutory representative or actual guardian to the activity, it is sufficient to note this fact in the minutes. In the event of refusal to admit, it would be appropriate for a procedural decision to be issued, especially since the occurrence of a negative premise must be justified. If the refusal is made by a body of preparatory proceedings, an order is sufficient. The importance of this decision does not justify the need to issue a resolution. However, if the matter concerns a judicial act in preparatory proceedings, the court must issue a resolution. It is obvious that the court does not issue orders, and in the situation under consideration, the competence of any of the judicial bodies authorised to issue orders, listed in Article 93 § 2 of the CCP, does not apply. A complaint against a negative decision is not possible, because the person whose rights would potentially be violated in this case is only the suspect (in whose interest the third party is to be admitted). Meanwhile, the only provision that comes into play in this case, Article 302 § 1 CCP, reserves the right to file an appeal only for persons who are not parties.

The second group of authorised persons includes a person other than the statutory representative and the person in whose care the suspect remains, provided that this other person is of age and is indicated by the suspect. The suspect may exercise this right only if they does not have a statutory representative or actual guardian, or if they have previously been excluded from participating in the activity due to the existence of one of the negative premises.

Who can act as a third party indicated by the suspect? The choice in this respect belongs to the suspect alone. It may be any adult person whom he – guided by specific, subjective reasons – indicates. This includes the closest persons within the meaning of Article 115 § 11 of the Criminal Code. It is also possible for the suspect to indicate a person related to him by personal or neighbourly ties. Considering that the suspect is a minor in this case, and that the regulation in Article 299b of the Criminal Code does not directly serve to ensure the correctness of the actions taken, there is little chance that the suspect would indicate a person who is a stranger to him, e.g. a representative of a social organisation or another institution. Although

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<sup>12</sup> M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania...*, op. cit., p. 1076.

the legislator does not limit the types of entities that may obtain the status of a third party, one should not lose sight of certain limitations, which in this case are understandable. There are certain categories of people who must be subject to appropriate exclusion for reasons of order, e.g. persons in a state indicating the consumption of alcohol or in another condition incompatible with the seriousness of the procedural act.

On the basis of the regulation in Article 299a § 1 CCP, the literature reserves the possibility of the presence of only one person indicated by the victim.<sup>13</sup> This thesis remains valid in relation to the regulation in Article 299b CCP. After all, in this case too, the regulation applies only in preparatory proceedings. This means that the presence of only one third party is justified in light of the specificity of preparatory proceedings, taking into account the limitation of the principle of openness at this stage of the proceedings and the nature of some procedural activities, which are mainly carried out at that time.<sup>14</sup>

The procedural body cannot indicate a third party on its own initiative. When the suspect expresses the will to make use of this possibility but shows a certain helplessness in indicating a specific person, the role of the procedural body is limited to providing assistance by identifying groups of potential persons. However, this role cannot extend to replacing the suspect in making the decision.

The literature<sup>15</sup> expresses the view that, due to the different nature of the situation in question, when a third party is indicated by the suspect, admitting them to the proceedings requires the issuance of an order indicating the reasons for excluding the statutory representative or actual guardian. It seems that this view should be relativised. In fact, when the procedural body almost simultaneously refuses to admit the statutory representative or actual guardian and at the same time accepts the participation of another adult person in the proceedings, it must express its position in the form of a decision, because – as established above – the first issue requires it. Both matters are then resolved in one procedural decision (order of the preparatory proceedings body, or resolution of the court). Exceptional situations may arise when a specific period of time separates the refusal to admit the statutory representative or actual guardian and the admission of another adult person. In relation to the latter issue, there are no obstacles to simply recording the fact of their admission in the minutes. However, the refusal to admit this person must already take the form of a procedural decision (an order of the preparatory proceedings body or a resolution of the court). Also in this case, as with the previous one, there is no right of complaint under Article 302 § 1 CCP.

For the sake of clarity, it should be added that Article 300 § 1 of the CCP provides for a top-down requirement to instruct a suspect who has not reached the age of 18, before the first interrogation, on the content of Article 299b CCP. The instruction is also to be given to the statutory representative or the person in whose care the suspect remains.

<sup>13</sup> Z. Brodzisz, in: Skorupka J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2015, p. 710.

<sup>14</sup> R. Koper, 'Obecność...', op. cit., pp. 1196–1197.

<sup>15</sup> M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania...*, op. cit., p. 1077.

## CONCLUSION

Introducing the possibility of the presence of a third party in preparatory proceedings involving the suspect should be assessed as a manifestation of the improvement of the procedural situation of this entity. It would be incorrect to assume that the aforementioned presence has purely technical significance and, therefore, offers only minor advantages. The protection of the interests of the suspect and, secondarily, the safeguarding of the proper conduct of activities carried out during a procedural stage characterised by a limited scope of openness are advantages that give this presence far greater significance than might initially appear. The guardianship function performed in relation to a suspect who has not reached the age of 18 gains a new, important point of reference in this context. At the same time, it cannot be ruled out that, in concrete terms, the interests of justice will also be protected.

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