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ON THE SUBSTANTIAL AND FORMAL ASPECTS
OF THE CONCEPT OF A PARTY

1. At present, a party to the criminal proceeding is understood as an entity that has a legal interest in a favourable judgement on the proceeding subject matter¹. The criterion for differentiating a party to the proceeding from other participants is recognised in having legal interest². It is to be the party's own interest regardless of the fact if he/she defends themselves on their own or is defended by a counsel. It is also to be the legal interest based on substantive law. The protection of this interest should be guaranteed by the norms of the juridical proceeding law. Thus the substantive basis of the legal interest of parties is constituted by the norms of the substantive criminal law and probably (in a criminal trial) the norms of civil substantive law³. The formal basis is created by the regulations of the proceeding law that specify the sphere of rights and duties allowing for an active participation in the role of a subject to the interest provided for in the substantive law⁴.

Thus, the element qualifying an entity as a party to the criminal proceeding is a concept of legal interest. It covers rights and duties based on law. Legal interest can be opposite to real interest. Whether the interest in favourable judgement on the proceeding subject matter is of legal or real character is based on the content of the binding regulations of substantive law. The provisions of

¹ See T. Grzegorzczuk, J. Tylman, *Polskie postępowanie karne* [Polish Criminal Proceeding], Warszawa 2011, p. 289; K. Marszał, *Proces karny. Zagadnienia ogólne* [Criminal Trial – General Issues], Katowice 2013, p. 215; J. Skorupka (ed.), *Postępowanie karne. Część ogólna* [Criminal Proceeding – General Issues], Warszawa 2012, p. 160; S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu* [Criminal Trial – System Outline], Warszawa 2013, p. 178.

² See M. Cieslak, *Polska procedura karna. Podstawowe założenia teoretyczne* [Polish Criminal Procedure – Basic Theoretical Assumptions], Warszawa 1984, p. 35; W. Daszkiewicz, *Prawo karne procesowe. Zagadnienia ogólne* [Criminal Proceeding Law – General Issues], Volume I, Bydgoszcz 2000, p. 204; T. Grzegorzczuk, J. Tylman, *Polskie postępowanie...* [Polish Criminal...], *op. cit.*, p. 289; B. Kmiecik, E. Skrętowicz, *Proces karny. Część ogólna* [Criminal Trial – General Issues], Kraków–Lublin 2002, s. 136; S. Waltoś, P. Hofmański, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 179.

³ See S. Waltoś, P. Hofmański, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 179; K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 215.

⁴ See S. Waltoś, P. Hofmański, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 180.

criminal law, civil law or other branches of law give grounds to treat an interest as a legal one. The fact that substantive law provides the protection of some values, i.e. gives them the status of legal interests, does not mean that the subject to the rights and duties becomes a party to the proceeding. He/she becomes one only when he/she requests the launch of a proceeding or, having been notified about the criminal proceeding organ's action, joins the trial.

The concept of a party to the proceeding is not the same as the concept of a party in substantive law, i.e. an entity (a party) to a legal relationship. K. Marszał rightly states that: "a criminal trial cannot be ruled out although there is a lack of a criminal-substantive relationship, i.e. a lack of violation of criminal substantive law. An indictment initiating a criminal trial before a court contains a statement about a violation of substantive law. Has it really taken place? This is what a court must adjudicate on after the hearing. Thus, the criminal-substantial relationship cannot be a decisive criterion for formulating a definition of a party to the proceeding because this fact can be established only as a result of the pending criminal proceeding"⁵.

Thus, it is necessary to distinguish a party in the formal (proceeding related) meaning and a party in the substantial meaning. Based on criminal proceeding law, the concept of a party is autonomous in character. It was developed in science for the needs of this branch of law. As it is understood in substantial law, parties are entities of a specified legal relationship (e.g. a landlord and a lodger as parties to the rent agreement, an editor and an author as parties to the publication agreement etc.). However, a party in substantive law is not always the same as a party in criminal proceeding law. For instance, in the civil proceeding, a party to the proceeding is a receiver and in the substantive meaning – a bankrupt⁶; in the criminal proceeding, a party to the proceeding is a public or subsidiary prosecutor or a plaintiff and in the substantive meaning – a victim of crime (the injured). Both concepts refer to other features and qualifications, but this does not rule out that a party to the proceeding after the examination of the case can turn out to be a subject to rights or duties in the light of the legal relationship between them.

Legal interest resulting from substantive law, determining the recognition of a given participant of the criminal proceeding as a party to it is also an element (criterion) of distinguishing a party to the proceeding in substantive and formal (purely proceeding related) meaning. Speaking about a party to the proceeding in substantive meaning, we do not refer to a party to a legal relationship, but a party in a criminal trial, the concept of which is not determined by a substantive element. In the concept of a party to the proceeding in the substantive

⁵ See K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 215.

⁶ For more see I. Gil, *Sytuacja prawna syndyka masy upadłości* [Legal Status of a Receiver], Warszawa 2007.

sense, legal interest in favourable judgement on the proceeding subject matter is a decisive element to recognise a given participant as a party to the proceeding; and in the concept of a party to the proceeding in the formal sense, this legal interest is not important for the recognition of a participant as a party.

2. However, basing the concept of a party to the proceeding on the substantive element raises disputes on what constitutes that substantive element. It should be reminded that the representative of German doctrine of the substantive concept of a party was A. von Kries, who believed that parties were entities whose rights and duties constituted the subject matter of the proceeding⁷. He defined parties as entities whose rights and duties were adjudicated on in a juridical proceeding⁸. The ability to become a party to the proceeding belonged to those for whom legal-penal claims (*strafrechtliche Ansprüche*) could be derived from a crime, or who became liable. Legal-penal claims were the right of the State because the prosecution of criminals is public in character. A. von Kries distinguished the ability to become an active participant from the ability to act in the proceeding, which the State is deprived of because this is the ability of natural persons. A. von Kries was also of an opinion that a prosecutor and a plaintiff are not parties but representatives of a party, i.e. the State. Treating a prosecutor or a plaintiff as representatives of the party resulted from the assumption that the represented party (a State) can never take an active part in a trial. The statutory representative and the party itself have the same rights in the proceeding⁹.

In Polish literature on criminal proceeding law, a concept of a party to the proceeding was also associated with the substantive-legal relationship. Parties were treated as entities “involved” in a relationship resulting from substantive law. S. Śliwiński stated “the parties to the proceeding are individuals [whose] trial this is, i.e. [their] trial”¹⁰. “Thus, an active part in a trial is a natural or juridical person or class plaintiff, on whose behalf a claim being a subject matter of the proceeding is examined (*cuius res in iudicium deducitur*). A passive party is a person who has been brought to trial, i.e. a person against whom a claim has been filed and must be adjudicated on in the proceeding (*is, contra quem res in iudicium deducitur*)”¹¹. Thus, parties are juridical equivalents of two entities of the substantive-legal relationship – one can claim, the other is liable. As only a State has the right to file a “criminal claim”, only a State is an active party

⁷ See A. von Kries, *Lehrbuch des deutschen Strafprozessrechts*, Freiburg 1982, p. 2.

⁸ See *ibidem*, p. 186.

⁹ See *ibidem*, pp. 186–187, 288.

¹⁰ See S. Śliwiński, *Polski proces karny przed sądem powszechnym* [Polish Criminal Trial Before a Common Court], Warszawa 1959, p. 155; According to S. Kalinowski, *Polski proces karny* [Polish Criminal Trial], Warszawa 1970, p. 189, the parties to the proceeding are only the entities in the proceeding, for whom the pending proceeding is “their trial”, the favourable result of which they are interested in.

¹¹ See S. Śliwiński, *Proces karny. Zasady ogólne* [Criminal Trial – General Rules], Warszawa 1948, p. 281.

in a criminal trial. Thus, a public prosecutor or a plaintiff (the injured) is only a substitute of the State as a party¹².

L. Schaff presented a similar opinion. He believed that “parties or a party to the proceeding are those entities for whom the pending proceeding is [their] trial. Unlike a participant of the proceeding (a person who is taking part in the proceeding in whatever role), a party to the proceeding is a natural or juridical person on whose demand a criminal trial was initiated or on whose behalf a claim as a subject matter of the proceeding is examined (e.g. based on a civil suit in a criminal trial) or a natural person (never a juridical person) against whom the proceeding is pending”¹³. According to L. Schaff, a public prosecutor (a legal representative of the State) only plays the role of a party, however, is not a party to the proceeding. A trial is not a public prosecutor’s one (“his” trial). It especially applies to a public prosecutor whose participation in a trial results from the function played by public prosecution service in connection with law enforcement. In this sense, a public prosecutor cannot be a party to the proceeding, i.e. in the juridical sense of the word¹⁴.

3. The substantive concept of a party was criticised in the German and Polish doctrine. There were objections that it does not take into account that the entities having a dispute in the proceeding are parties also when in fact their substantive-legal relationship does not exist, thus regardless of the future court’s judgement. Especially E. Beling emphasised that, although there are substantive parties and we speak about them in a criminal trial, the substantive-legal relationships do not give anybody a juridical role, and this is what matters in the determination of a party to the proceeding¹⁵.

K. Binding expressed a different opinion on a party to the proceeding. According to him, a public prosecutor is “a suing State”, thus also a party. A prosecutor brings a suit on his own behalf and not on behalf of the State¹⁶. K. Binding also said that in all private complaint trials, a State is a “hidden party”. Thus, it is one even when it does not act through its substitutes. Even in such cases, a court’s ruling either gives the right to punish or denies that right but not to the prosecutor but to the State¹⁷.

In Polish literature, also M. Cieślak refers to the link between a party to the proceeding and the substantive-legal relationship. He states “a party is an entity acting in an adequate proceeding role whose interest is involved in a juridical

¹² See S. Śliwiński, *Proces karny...* [Criminal Trial...], *op. cit.*, pp. 286–289.

¹³ L. Schaff, *Proces karny Polski Ludowej* [Criminal Trial in the People’s Republic of Poland], Warszawa 1953, p. 279.

¹⁴ L. Schaff, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 279.

¹⁵ See E. Beling, *Deutsches Reichsstrafprozessrecht*, Berlin–Leipzig 1928, p. 122 and next.

¹⁶ See K. Binding, *Strafrechtliche und strafprozessuale Abhandlungen*, München–Liepzig 1915, pp. 55 and 69.

¹⁷ See *ibidem*.

dispute”¹⁸. As M. Cieślak says, “a party is an entity involved in a dispute in a trial who files claims based on substantive law against another entity, or an entity against whom a claim is addressed”¹⁹. An entity whose interest is involved in a juridical dispute is a party in substantive meaning. Thus, a party is an entity whose interest is involved in a juridical dispute”²⁰.

M. Cieślak’s standpoint demonstrates a different attitude to a party than that of A. von Kries’s concept. According to M. Cieślak, it is not a problem whether a party to the proceeding is a subject to a substantive-legal relationship and a court is to decide on its substantive-legal rights and duties, but whether a given entity is interested in adjudication, i.e. whether it has a legal interest in it.

With regard to the concept of legal interest as an element creating a concept of a party to the criminal trial, W. Daszkiewicz states “a person can have an interest in the adjudication even if he/she is not a subject to a substantive-legal relationship (one of the parties to the relationship). The injured who acts as a plaintiff or a subsidiary prosecutor has a legal interest because – in accordance with the prosecution thesis – his/her good was infringed and the protection of that good is one of the aims of the proceeding. However, he is not subject to the substantive-legal relationship in the sphere of criminal law. Criminal substantive relationship resulting from a crime comes into existence between the State and a perpetrator of that crime”²¹. W. Daszkiewicz also states that the scope of the legal interest is broader than the range of substantive-legal relationship because “the direct infringement of an individual good is a direct infringement of a common good and vice versa. That is why a crime is a fact that (directly and indirectly) touches the interests of individuals and the interests of the whole community”²². This leads W. Daszkiewicz to an opinion that “a party to a criminal procedure is an entity that participates in the proceeding on his/her own behalf or his/her representative acts on their behalf and who has a legal interest in a favourable ruling on the proceeding subject matter”²³.

Criticising a substantive approach to a party to the proceeding in the meaning suggested by A. von Kries and S. Śliwiński, W. Daszkiewicz also states that “the problem of parties to a criminal trial can be solved only in connection with the essence of that process. It is necessary to first answer a question whether a criminal trial is a proceeding between parties. If we follow a standpoint that a criminal trial is a proceeding between parties, it is necessary to accept that an

¹⁸ See M. Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne* [Polish Procedure – Basic Theoretical Assumptions], Warszawa 1973, p. 34.

¹⁹ See M. Cieślak, *ibidem*.

²⁰ See M. Cieślak, *ibidem*.

²¹ See W. Daszkiewicz, *Przedstawiciel społeczny w procesie karnym* [Civic Representative in a Trial], Warszawa 1976, p. 77.

²² Compare M. Cieślak, *Polska procedura...* [Polish Criminal Procedure...], *op. cit.*, p. 391.

²³ See W. Daszkiewicz, *Przedstawiciel społeczny...* [Civic Representative...], *op. cit.*, p. 78.

active party is one on behalf of which a claim is investigated²⁴. According to this author, “this definition rightly detaches the concept of a party to the proceeding from the substantive-legal relationship. The argument quoted by the opponents of the idea that parties also exist when the substantive-legal relationship does not exist is in fact especially accurate”. Moreover, if we assumed that an active party is a person who has the right to a claim in criminal proceeding, it would be necessary to treat a plaintiff as an organ of the State, which in this case would be a party. On the other hand, if – from the functional point of view – we assumed that an active party is the entity that files a claim to punish the accused, the difference between the right party to the proceeding and its representative who can also make such a request would disappear²⁵.

As a result, having assumed that an active party is an entity on whose behalf a claim is investigated, W. Daszkiewicz states that: “not every prosecutor is a party. [...] Only a plaintiff is a party. As far as a public prosecutor is concerned, he is only an organ of the State that is a party. In the event there are a few public prosecutors, there are not many parties but a few representatives, or more precisely a few organs, of one party – the State”²⁶.

In the presented conceptions, the substantive element as a party to the proceeding is the existence of a given entity as a party to the substantive-legal relationship (S. Śliwiński, L. Schaff) or having a legal interest in favourable adjudication on the proceeding subject matter (M. Cieślak, W. Daszkiewicz). The result of the substantive approach to a party in the above-given meaning is the treatment of the State as an active party in a criminal trial. This is connected with the treatment of a public prosecutor and a plaintiff as a substitute of the State (S. Śliwiński) or an entity that only plays the role of a party (L. Schaff) or the treatment of a public prosecutor as an organ of an active party (W. Daszkiewicz).

4. In connection with the critical approach to the conception based on the “claim in criminal proceeding”, it started to be assumed in the Polish doctrine that the substantive element of the definition of a party to the proceeding is the so-called interest in the adjudication on the proceeding subject matter. According to M. Cieślak, a party is “a subject to interests involved in a proceeding dispute playing a juridical role”²⁷. According to S. Waltoś, a party is an entity having their “own legal interest” based on the substantive law and protected by criminal proceeding law²⁸. W. Daszkiewicz also emphasises this aspect and

²⁴ See *ibidem*.

²⁵ See W. Daszkiewicz, *Oskarżyciel w polskim procesie karnym* [A Prosecutor in a Polish Trial], Warszawa 1960, p. 35.

²⁶ See *ibidem*.

²⁷ See M. Cieślak, *Polska procedura karna...* [Polish Criminal Proceeding...], *op. cit.*, p. 35.

²⁸ See S. Waltoś, *Proces karny. Zarys systemu* [Criminal Trial – System Outline], Warszawa 2009, p. 185; According to K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 215, definitions of a party to the proceeding should be linked with the relationship of controversy. Briefly speaking, parties who

assumes that a party is an entity that “participates in the trial on his own behalf or on whose behalf somebody else acts and who has an interest in favourable adjudication”²⁹, as does K. Marszał, who assumes that parties are “subjects to a dispute relationship participating in the trial on their own behalf”, i.e. “entities that have a legal interest in favourable adjudication on the proceeding subject matter” but they act “on their own or through their representative”³⁰. On the other hand, according to S. Kalinowski, every party wants to achieve a “favourable” adjudication so has an interest in “winning in the dispute”³¹.

5. Apart from the concept of a party to the proceeding in the substantive meaning, the German and Polish doctrines of the criminal proceeding law present standpoints in connection with the formal concept of a party to the proceeding. In the German doctrine of the proceeding law, K. Birkmeyer emphasised that “the concept of ‘a creditor’ and ‘a debtor’ is unimportant for the concept of a party to the proceeding. The rights and duties with regard to *res in iudicium deducta* are important for the doctrine on parties only in connection with the issue who, in general, plays the role of a party but not the issue who is a party in the proceeding”³². K. Birkmeyer continued that the adoption of the substantive-legal definition of a party leads to a denial of the existence of a party to the criminal proceeding because it must be assumed that the State is a party and a single party interest contrary to the interest of the accused cannot be imputed to the State. He concluded that a concept of a party must be derived from a purely juridical point of view. According to K. Birkmeyer, a party is a person who, in a criminal trial, pursues juridical adjudication against another person and who by force of his own decision, but under the supervision of a judge, decides about the proceeding forms and measures. A party understood in this way is a party in the formal meaning. In the substantive meaning, it becomes a party if there is an additional element, i.e. that it is involved in a dispute about its own right. The accused is always a party in the formal and substantive meaning. On the other hand, a prosecutor is always a party in a formal meaning because he files a claim in criminal proceeding which is not his but the State’s³³.

participate in a criminal trial on their behalf are entities in a controversy relationship. If you ask about these entities of this controversy relationship, it must be said they are entities having a legal interest in a favourable ruling on the proceeding subject matter. Thus, it can be assumed that parties having a legal interest in a favourable ruling on the proceeding subject matter are entities of the controversy relationship in the proceeding. A party acts on its behalf or acts through a representative.

²⁹ See W. Daszkiewicz, *Proces karny. Część ogólna* [Criminal Trial – General Issues], Poznań 1996, p. 205.

³⁰ See K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 215.

³¹ See S. Kalinowski, *Polski proces...* [Polish Criminal...], *op. cit.*, p. 190.

³² See K. Birkmeyer, *Deutsches Strafprozessrecht*, Berlin 1889, p. 292 and next.

³³ See *ibidem*.

In the Polish doctrine of criminal proceeding law, M. Siewierski formulated a purely juridical definition of a party stating that: “parties are persons who on their behalf file charges and support them before a court [...] or pursue adjudication on their civil claims [...] and persons against whom the proceeding is pending”³⁴. The definition focuses, with regard to active parties, on the in-court stage of the proceeding but its author admits that also the injured acts as a party in the investigation³⁵.

Also the Supreme Court highlighted the distinction between a party to the proceeding in the substantive and formal meaning in its resolution of 14 February 1931³⁶ stating that: “the State is always a party to criminal proceeding in the substantive meaning. A party in the formal meaning, i.e. a subject to the proceeding relationship, is always a natural or juridical person, however this status of a person can result from the provisions of private or public law. A public prosecutor is “a representative of the State authority”, thus he is an official organ of the State that prosecutes a criminal case. In such a situation, the State is a substantive and formal party, and a public prosecutor only an organ of that party. In cases based on civil lawsuit, a formal party to the proceeding is a plaintiff who does not act as an organ of the authorities and with the privileges of that organ but by virtue of their own proceeding right”.

Not distinguishing between the substantive and formal aspects as K. Birkmeyer does, in the Polish doctrine, M. Cieślak expressed an opinion that the State is not a party and it is not a participant of the proceeding either, although a public prosecutor is its representative entitled to prosecute criminal cases and the court issues sentences on its behalf. The State is an element in whose interest the juridical proceeding functions in general and it cannot be associated with one or the other role in the proceeding³⁷. In order to supplement the above standpoint, it is necessary to mention the opinion of T. Grzegorzczak and J. Tylman that “a public prosecutor in a criminal trial does not act in the interest of the State. He acts by virtue of a statutory delegation and assignment of competence to different organs of the State, acts on his behalf and this activity is his legal duty; thus, in fact a trial is also his trial. A prosecutor is interested in adjudication on the trial subject matter in accordance with the substantive and proceeding law, i.e. in a just ruling in both aspects. This is the prosecutor’s own interest as an organ of public prosecution”³⁸.

³⁴ See M. Siewierski, J. Tylman, M. Olszewski, *Polskie postępowanie karne w zarysie* [Polish Criminal Proceeding – An Outline], Warszawa 1974, p. 81.

³⁵ Compare *ibidem*, p. 35.

³⁶ See resolution of the Supreme Court of 14 February 1931, II Pr 195/30, RPEiS 1931, vol. III, p. 763.

³⁷ See M. Cieślak, *Proces karny* [Criminal Trial], Kraków 1951, part I, pp. 42–43.

³⁸ See T. Grzegorzczak, J. Tylman, *Polskie postępowanie...* [Polish Criminal...], *op. cit.*, p. 288.

6. Emphasising the legal interest in a favourable adjudication on the proceeding subject matter is a key element in deciding whether a particular participant as a party does not eliminate doubts connected with the prosecutor acting as a public prosecutor. It is rightly noticed that every crime infringes or puts at risk a public interest (of a community or the State) and private (individuals') interests³⁹. A crime results in a conflict between a perpetrator and a victim and between a perpetrator and the community. A crime does not result in a conflict between a perpetrator and a prosecutor or the prosecution service or a public prosecutor because it does not infringe and does not put at risk any of their interests. Nevertheless, the prosecution service as an institution of the State and a prosecutor as an organ involved in the preparatory proceeding and also as a public prosecutor are interested in bringing a perpetrator to justice and (criminal or civil) liability. They do not do that, however, because they have their own legal interest but because they are obliged to do that by the community (a commune or the State) whose legal interests they represent in criminal proceeding. A public prosecutor does not have his own (private) interest in adjudication on the proceeding subject matter in the substantive sense because he cannot drop charges if those are based on the legally collected evidence, there is a high probability that a given person committed a crime and a trial is legally admissible. Prosecution as an institution and a prosecutor as an organ of criminal proceeding as well as a public prosecutor are legally obliged to prosecute crime and bring those who committed them to trial before a court. Because of that, the above-mentioned entities have an interest in adjudication on the proceeding subject matter, but it is not their personal interest but a legal interest. Thus, it is difficult to approve of the statement that a public prosecutor is interested in a favourable adjudication on the proceeding subject matter. Apart from the above-mentioned comments, there are other arguments against that: the duty to be objective and impartial and the pursuit of the criminal trial task, i.e. the prosecution of the culprit and the release of the innocent. However, it is in the interest of the community that the penal repression reaches only the perpetrator of a crime. A public prosecutor's legal duty is also to prove facts in the course of a trial, which results from the principle of innocence and the necessity to prove somebody's guilt. But a prosecutor does not meet these requirements in his own interest but in the interest of the community. Looking at the issue from this perspective, it is not difficult to treat the community (a commune or the State) as a party to the proceeding because of the earlier mentioned reasons. Because of them, K. Marszał says that a prosecutor is not a party to the proceeding in the same sense as the accused or the injured, who are involved. He only implements

³⁹ Compare M. Cieślak, *Polska procedura karna...* [Polish Criminal Procedure...], *op. cit.*, p. 391.

the rights of a party as a public prosecutor⁴⁰. At the same time, he is – even at the juridical stage – an organ guarding the rule of law with the right to appeal against court rulings that are or are not in favour of the accused⁴¹.

7. The above-mentioned issues take place in the event of defining a party to the proceeding in the formal sense. Adequately, a party to the criminal proceeding is an entity who on their behalf files a charge and supports it before a court or pursues a civil claim and a person against whom the proceeding is pending⁴². However, having in mind that parties to the proceeding already exist in the preparatory proceeding and the fact that it is the legislator who decides who is a party, it is necessary to modify the definition and assume that a party to the proceeding in a criminal case is an entity that is legitimised to prosecute before a court or to pursue civil claims and in the preparatory proceeding legitimised to protect its interests as well as an entity against whom the proceeding is carried out (legitimised to be a suspect or the accused), recognised to be a party by the provisions of the criminal proceeding law. Thus, active and passive participation in the proceeding on one's behalf and the legislator's will to recognise a given participant as a party to the proceeding is decisive in the recognition of a participant to be a party to the proceeding. In the discussed concept, the substantive element, e.g. the legal interest in favourable adjudication on the proceeding subject matter, is not a decisive element in the recognition of an entity to be a party of the proceeding. Thus, even if an entity has the said interest, it does not have to be a party to the proceeding.

The legislator's standpoint on the recognition of an entity specified in Article 52 of the Criminal Code to be a party to the proceeding expressed in the Act of 28 September amending the Criminal Procedure Code supports the adoption of the concept of a party only in the formal sense. *De lege lata*, the entity is not a party to the proceeding. It is assumed to have a status of a quasi-party⁴³, which is justified by the fact that its rights in the proceeding were regulated not in the provisions on parties but in particular provisions on the proceeding that altogether do not grant this entity all the rights that parties have in the proceeding⁴⁴. However, it is necessary to notice that in accordance with Article 52 of the Criminal Code, in the event a perpetrator is sentenced for committing

⁴⁰ See M. Lipczyńska, A. Kordik, Z. Kegel, Z. Świda-Łagiewska, *Polski proces karny* [Polish Criminal Trial], Warszawa–Wrocław 1975, p. 110.

⁴¹ See M. Cieślak, *Polska procedura...* [Polish Criminal...], *op. cit.*, p. 33.

⁴² See M. Siewierski, J. Tylman, M. Olszewski, *Polskie postępowanie...* [Polish Criminal...], *op. cit.*, p. 81.

⁴³ See T. Grzegorzczak, J. Tylman, *Polskie postępowanie...* [Polish Criminal...], *op. cit.*, p. 359; K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 219; differently S. Waltoś, P. Hofmański, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 182, who treat this entity as a special party to the proceeding.

⁴⁴ With respect to that, it must be noticed that a plaintiff who has a status of a party to the proceeding can make use of only few rights of the parties (e.g. a public prosecutor or the accused).

a crime that resulted in material profit to a natural or juridical person or an organisational unit with no separate legal identity and that was committed on behalf or in the interest of that entity, a court rules that the entity that gained that material profit must return the whole or a part of it to the State Treasury; it does not apply to material profit that must be returned to another entity. Thus, the provision of Article 52 of the Criminal Code stipulates that there is subordinate liability, i.e. liability for somebody else's demeanour when: (1) an entity specified in Article 52 of the Criminal Code is sentenced for a crime resulting in material profit to them, (2) a crime is committed by a perpetrator acting on behalf or in the interest of an entity who gained material profit⁴⁵.

The entity specified in Article 52 of the Criminal Code, has a legal interest in favourable adjudication on the proceeding subject matter because the perpetrator's criminal liability bears the entity's liability to the State Treasury and the acquittal releases the entity from that liability. Despite that and although this entity has numerous rights in the course of the proceeding, including the right to appeal against the court ruling issued in the first instance (Article 425 § 1 of the Criminal Procedure Code), it is not recognised to be a party.

On the other hand, the Act of 28 of September 2013 amending the Criminal Procedure Code grants the entity liable for returning material profit from a crime to the State Treasury a status of a party to the proceeding. It is expressed in the provision regulating the status of the given entity in Article 81b in Part III of the Criminal Procedure Code titled "Parties, counsels, plenipotentiaries and a social representative" in Chapter 8a, which is after the Code Chapter dealing with the accused. In accordance with the new Article 8b, the entity liable for the return of material profit from a crime to the State Treasury is an entity, against which a prosecutor filed an indictment and a motion to a court to make them liable for such a return due to the profit gained in the circumstances defined in Article 52 of the Criminal Code. In the literature on this topic, it is highlighted that the above-mentioned amended regulation introduces changes that decide

⁴⁵ See W. Daszkiewicz, *Zobowiązanie do zwrotu korzyści majątkowej uzyskanej wskutek przestępstwa popełnionego przez inną osobę* [Obligation to return material profit obtained as a result of a crime committed by the third party], [in:] *Nowa Kodyfikacja Karna. Krótkie komentarze* [New Criminal Codification – Short Commentaries], volume 16, Warszawa 1998, p. 120; T. Grzegorzczak, *Sytuacja prawna podmiotu odpowiedzialnego za zwrot korzyści uzyskanej z przestępstwa innej osoby w procesie karnym* [Legal situation of an entity responsible for the return of profit obtained from a crime committed by another person in a criminal trial], [in:] *Nowa Kodyfikacja Karna. Krótkie komentarze* [New Criminal Codification], volume 1, Warszawa 1997, p. 55; R.A. Stefański, *Obowiązek zwrotu korzyści majątkowej uzyskanej z przestępstwa popełnionego przez inną osobę* [Obligation to return material benefit obtained from a crime committed by another person], *Prok. i Pr.* 2000, No. 3, p. 123; D. Skrzyńska, *Charakter odpowiedzialności z art. 52 Kodeksu karnego* [The character of liability under Article 52 of the Criminal Code], *Prok. i Pr.* 2002, No. 3, p. 40; also, *Zobowiązanie do zwrotu korzyści na rzecz Skarbu Państwa przez podmiot określony w art. 52 KK* [Obligation to return profit to the State Treasury by an entity specified in Article 52 of the Criminal Code], *WPP* 2002, No. 2, s. 56; D. Kaczorkiewicz, *Pozycja podmiotu zobowiązanego do zwrotu korzyści majątkowej w polskim procesie karnym (art. 52 Kodeksu karnego)* [Position of an entity obliged to return material profit in Polish criminal process (Article 52 of the Criminal Code)], Toruń 2005.

on the participation of a subsidiary liable entity in the criminal proceeding as a party⁴⁶.

It must be also pointed out that the cited amendment does not grant new essential rights to the entity defined in Article 52 of the Criminal Code. However, it considerably changes their position and situation in the proceeding because they did not use to be and now after the change they are a party to the proceeding.

8. Summing up, it must be said that the definition of the concept of a party to the criminal proceeding based on the substantive element of a legal interest in favourable adjudication on the proceeding subject matter or another substantive element raises irrevocable doubts about the treatment of a prosecutor and a public prosecutor as an active party. The adoption of the formal meaning of a party to the proceeding does not raise such problems. The substantive element in the form of a legal interest constitutes, however, a considerable supplement to the elements of the definition of a party to the proceeding. It highlights the argument (a reason or a cause) that makes a given entity launch a criminal trial or take part in it, file a charge or pursue a civil claim, or become a suspect or the accused protecting their interests in a trial.

ON THE SUBSTANTIAL AND FORMAL ASPECTS OF THE CONCEPT OF A PARTY

Summary

In the context of the latest changes in Polish criminal procedure, the author considers the meaning of the substantive element of the definition of a party to the proceeding in the form of legal interest in a favourable judgement on the proceeding subject matter. The author formulates a thesis that defining a party to a criminal trial based on the substantive element raises irrevocable doubts in connection with the treatment of a prosecutor or public prosecutor as an active party. The formal meaning of a party to the proceeding does not raise such problems.

⁴⁶ See K. Marszał, *Proces karny...* [Criminal Trial...], *op. cit.*, p. 220.

O POJĘCIU STRONY W ZNACZENIU MATERIALNYM I FORMALNYM

Streszczenie

W kontekście najnowszych zmian w polskiej procedurze karnej autor rozważa znaczenie materialnego elementu definicyjnego strony procesowej w postaci interesu prawnego w korzystnym rozstrzygnięciu o przedmiocie procesu. Autor stawia tezę, że definiowanie pojęcia strony w procesie karnym na podstawie materialnego elementu rodzi nieusuwalne wątpliwości co do traktowania prokuratora i oskarżyciela publicznego jako strony czynnej. Problemów takich nie rodzi przyjęcie formalnego znaczenia strony procesowej.

DE LA NOTION DE PARTIE AU SENS MATÉRIEL ET FORMEL

Résumé

Dans le contexte des derniers changements dans la procédure pénale polonaise l'auteur analyse le sens de l'élément matériel de définition de la partie du procès sous la forme de l'intérêt légal dans la décision avantageuse de l'objet du procès. L'auteur présente l'hypothèse que la mise en définition de la partie dans le procès pénal à la base de l'élément matériel cause des doutes inamovibles dans le cadre du traitement du procureur et accusateur public en tant que partie active. Ces problèmes n'apparaissent pas au moment d'accepter le sens formel de la partie du procès.

О ПОНЯТИИ СТОРОНЫ В МАТЕРИАЛЬНОМ И ФОРМАЛЬНОМ ЗНАЧЕНИИ

Резюме

В контексте новейших изменений в польском уголовном судопроизводстве автор рассматривает значение материального элемента определений процессуальной стороны в форме правового интереса в выгодном рассмотрении дела о предмете процесса. Автор представляет гипотезу о том, что определение понятия стороны в уголовном судопроизводстве на основе материального элемента рождает непреодолимые сомнения касательно трактовки прокурора и общественного обвинителя как активной стороны. В свою очередь, такие проблемы не возникают в результате формального принятия значения процессуальной стороны.