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THE AXIOLOGY OF JUDICIAL INVOLVEMENT IN THE PREPARATORY PROCEEDINGS IN LIGHT OF THE MODEL OF CRIMINAL PROCEDURE

Abstract: The article addresses judicial involvement in preparatory proceedings within continental legal systems from an axiological perspective. This stage, dominated by law enforcement, is inherently characterized by its punitive nature, secrecy, and inequality of arms, making it highly susceptible to axiological tensions. The authors' primary objective is to demonstrate that judicial intervention serves as a pivotal instrument guaranteeing the realization of values within the criminal process, rather than merely constituting a technical oversight mechanism. Employing dogmatic-legal and theoretical-legal methods, the study distinguishes between the technical and axiological objectives of criminal proceedings. The latter is defined as the actualization of values, categorized into autotelic (human dignity, the rule of law, justice, substantive truth) and praxeological (trust, security, integrity, morality). The analysis maps out three European institutional models: the investigating judge (*juge d'instruction*), the judge for preparatory proceedings, and the court of competent jurisdiction (as in Poland). Functionally, this judicial presence rests upon decision-making, supervisory, and evidentiary acts. An independent court realizes autotelic values by shielding individuals from state authoritarianism, and praxeological values by fostering public trust in the administration of justice. In conclusion, the authors formulate *de lege ferenda* proposals for Poland, advocating for the abolition of the redundant investigation-inquiry distinction, the expansion of judicial decision-making powers, and the introduction of a specialized judge for preparatory proceedings.

Keywords: Preparatory proceedings, Judicial involvement (Judicial element), Axiology, Values of criminal proceedings, Judge for preparatory proceedings.

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1. INTRODUCTION

In civil law systems, the preparatory proceedings constitute a distinct stage of criminal procedure¹. In legal scholarship, we can refer to a model of preparatory proceedings that should be reconstructed from legal doctrine as a set of core elements within a specific framework, allowing it to be identified and distinguished from other such frameworks². A model understood in this manner consists of individual components, which include: its objectives, functions, forms, and phases; prosecutorial supervision over the preparatory proceedings; the involvement of the judicial element; and the methods of concluding the preparatory proceedings³.

It must be emphasized that the preparatory proceedings, as a stage of the criminal process, possess their own distinct characteristics. This stage should be recognized as the most intrusive regarding civil rights and liberties, dominated by the state's public-law authority exercised through the actions of the prosecution and authorized investigative bodies. Furthermore, it is characterized by its punitive nature, an asymmetry between the parties, and confidentiality. However, this does not provide a complete picture of this procedural stage. In European models of preparatory proceedings, the judicial element constitutes an integral component, serving as a guarantor of the rule of law and the judicial protection of human rights⁴. It acts as a safeguard of sorts, performing specific judicial acts in circumstances prescribed by law, or refusing to authorize certain actions undertaken by investigative bodies.

The issue of judicial involvement in preparatory proceedings is of fundamental importance and serves as a catalyst for multi-faceted deliberations regarding the optimal and desired structure of criminal procedure. Given the dynamic evolution of criminal procedure, the following research problem emerges: whether the involvement of the judicial element serves to realize values that extend beyond the purely formal correctness of criminal procedure.

Moving beyond a purely technical perspective, it must be noted that judicial involvement in preparatory proceedings is not merely a dead letter institution of a supervisory nature, but one of the key axiological instruments guaranteeing the realization of specific values within the criminal process. In order to substantiate this thesis, the authors will employ the following methods inherent to legal scholarship: the legal-dogmatic method and the legal-theoretic method.

- 1 Cezary Kulesza, *Sędzia śledczy w modelu postępowania przygotowawczego na tle porównawczym*, (Białystok: Dział Wydawnictw Filii UW w Białymstoku 1991): 19; Stanisław Waltoś, *Model postępowania przygotowawczego na tle porównawczym*, (Warszawa: PWN, 1968): 98.
- 2 Krzysztof Eichstaedt, *Rola sądu w postępowaniu przygotowawczym a instytucja sędziego śledczego*, (Warszawa: Difin. 2009): 13; Stanisław Waltoś, *Model postępowania przygotowawczego na tle porównawczym*, 9; Cezary Kulesza, *Sędzia śledczy w modelu postępowania przygotowawczego na tle porównawczym*, 15; Alfred Kaftal, „Model postępowania przygotowawczego de lege ferenda w prawie Polski”, *Studia Prawnicze*, no. 1 (1989): 53.
- 3 Piotr Kruszyński (ed), *Wykład prawa karnego procesowego*, (Białystok: Temida 2, 2004): 302–322.
- 4 Tomasz Bojanowski, „Selected Standards of Preparatory Proceedings in European Legal Systems”, *Pécs Journal of International and European Law*, no. 1 (2025): 5–21.

2. THE CONCEPT OF VALUES AND OBJECTIVES OF CRIMINAL PROCEDURE – A MODEL APPROACH

This section of the study requires reference to the Polish model of criminal procedure in the context of defining the objectives of the criminal process and proposing a concept of values. Within the Polish Code of Criminal Procedure, two primary objectives of criminal proceedings can be distinguished; while they are essentially identical in terms of their outcome – namely, correctly determining the scope of criminal liability – they differ in construction and methodology. The first is the technical objective of criminal proceedings. The second is the axiological objective of criminal proceedings. As for the first – the technical objective – it stems directly from the provisions of the Polish Code of Criminal Procedure and is quite clear and straightforward⁵. This objective entails applying the rules of criminal procedure in such a manner as to correctly implement the provisions of substantive criminal law. This is articulated in Article 2 of the Polish Code of Criminal Procedure⁶, pursuant to which the objectives of criminal proceedings are to structure the proceedings so that:

- 1) the perpetrator of an offense is detected and brought to criminal liability, and that an innocent person does not incur such liability;
- 2) through the correct application of measures provided for in criminal law, and the disclosure of circumstances conducive to the commission of the offense, the objectives of criminal proceedings are achieved not only in combating offenses, but also in preventing them, as well as in strengthening respect for the law and the principles of social coexistence;
- 3) the legally protected interests of the victim are taken into account, while simultaneously respecting their dignity;
- 4) the resolution of the case takes place within a reasonable time⁷.

It must be emphasized that the objectives of the criminal process within the Polish model, in the context of the preparatory proceedings stage, are further specified in Article 297 of the Code of Criminal Procedure. The tasks of this stage of the process are, respectively:

- 1) establishing whether a prohibited act has been committed and whether it constitutes an offense;
- 2) detecting and, if necessary, apprehending the perpetrator;
- 3) gathering personal and background data concerning the suspect;
- 4) clarifying the circumstances of the case, including identifying the victims and determining the extent of the damage;

5 Marcin Wielec, *Wartości – analiza z perspektywy osobliwości postępowania karnego*, (Lublin: Academicon, 2017), 149–277.

6 The Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2026, item 490, as amended).

7 Jarosław Zagrobnik, *Proces karny*, (Warszawa 2021): 32–40.

- 5) collecting, securing, and, to the extent necessary, recording evidence for the court⁸.

Hence, the term ‘technical objective’ is used, as it amounts to the direct, technical implementation of the provisions of substantive criminal law – namely, the provisions of the Criminal Code. Conversely, the axiological objective is more complex, given that its realization concerns not only legal relations, but also social interactions and spheres. The keywords here are, of course, values – their understanding and interpretation. Under this approach, the general axiological objective of criminal proceedings is the realization of values within the criminal process. Framing the subject in this manner paves the way for explaining what values are and how they are classified from the perspective of criminal procedure.⁹

As previously indicated, the axiological objective of criminal proceedings is the realization of values; however, to provide a deeper explanation of this aspect, it is necessary to define what values are and how they relate to criminal procedure. Linking the issue of values with criminal procedure is a critical matter, as values constitute one of the foundations of the very existence of the criminal process¹⁰. In the authors’ view, values should be the fundamental, albeit abstract and invisible, elements influencing the entire structure of criminal proceedings. It must be noted that values are integrally linked to the social sphere. It is society that imparts specific content to them, enables their respect, and subsequently enforces their realization. This brings us very close to the domain of law, as confirmed by the Latin maxim: *ubi societas, ibi ius* (where there is society, there is law). It follows that law is the vehicle for various values correlated with the specific nature of a given field of law¹¹.

In view of the above, values should be treated as universally undisputed convictions and principles of conduct, as objectives essential for individuals, the attainment of which is regarded as paramount in any social configuration. In this sense, values also serve as the basis for building proper social relations, in which law is a cardinal element. Descartes argued that values are eternal and that man cannot be their creator but merely discovers and adopts them. Values define what is permitted and what is prohibited.¹²

It must be emphasized that values represent an unlimited domain, and for the purposes of this study, they are narrowed down to the area of criminal procedure. Law as a vehicle for values, and criminal proceedings as an instrument for the implementation of substantive criminal law norms, should be in harmony with social relations. Within the framework of the law, values appear as the fundamental determinant of assessments and standards of conduct for members of a community; they

8 Agnieszka Baj, „Cele postępowania przygotowawczego”, *Prokuratura i Prawo*, no. 12 (2016): 63–76.

9 Marcin Wielec, „Values in the light of the polish model of criminal procedure”, *Revista Facultății de Drept Oradea*, no. 1 (2022): 77–86.

10 Marcin Wielec, „Values in the light of the polish model of criminal procedure”: 77–86.

11 Kazimierz Denek, „Związek edukacji z wartościami”, *Neodidagmata*, no. 29/30 (2007–2008): 25–38.

12 Marcin Wielec, *Wartości – analiza z perspektywy osobliwości postępowania karnego*, 149–277.

signify – as legal scholarship emphasizes – everything that is valuable and desirable, everything that constitutes the goal of human aspirations, and everything that is considered important and conducive to well-being, and is thus pursued¹³.

Translating the above into the realm of criminal law: values are intended to influence the structure and course of criminal proceedings, as well as to set the boundaries for actions taken in the course thereof. This will be reflected in the standards of attitudes and conduct required of the participants in the criminal process¹⁴.

In this perspective, values can be divided into two closely interrelated groups: autotelic and praxeological. Autotelic values are defined as ultimate (absolute) values. Their autotelic nature is rooted in the paradigm of their unconditional respect, which, consequently, leads to the achievement of the objectives belonging to a given field. Due to the specific nature of criminal proceedings, the realization of autotelic values in this domain is an end in itself. Praxeological (instrumental, auxiliary) values are essentially useful for the achievement of autotelic values¹⁵.

In the case of criminal proceedings, the realization of autotelic values is an absolute necessity, as one of the objectives of the criminal process is, *inter alia*, to determine criminal liability based on actions carried out at various stages of the proceedings, following the establishment of the true course of events. Thus, the role of autotelic values is *in gremio* indisputable. Given the specific nature of criminal proceedings, the realization of autotelic values in this domain is an end in itself. Autotelic values form the foundation of criminal proceedings, creating a kind of timeless constellation intended to protect the individual's position against any potential abuses by other – especially more powerful – participants in the criminal process. They also serve another role: their proper realization provides the justification for the ultimate derivation of a sound decision in criminal proceedings. On the other hand, one must not lose sight of the fact that the group of autotelic values is supported by praxeological values.¹⁶

Autotelic values therefore constitute a group of values consisting of the following elements: 1) human dignity as the supreme value, which lies at the very foundation of all deliberations conducted within the framework of criminal procedure; 2) the rule of law, which, in this context, shall be defined as the absolute requirement for procedural authorities to observe the law and to act in accordance with the letter of the law; 3) justice, understood unerringly as the diligent and equal application of the rules of criminal procedure by the authorized entities, resulting in decisions that are comprehensible and generally acceptable; 4) truth, conceived as the conformity of decisions with the actual state of affairs to which the decision relates, since the basis of every decision in criminal proceedings should be true factual findings¹⁷.

13 Waldemar Janiga, „Funkcje wartości w osobowości”, *Studia Warmińskie*, no. XLIII (2006): 225–236.

14 Bożena Sztumska, Janusz Sztumski, *Człowiek w świecie wartości*, (Katowice: PAN, 2002).

15 Marcin Wielec, *Wartości – analiza z perspektywy osobliwości postępowania karnego*, 149–277.

16 Jan Kościuch, „Kwestionariusz Milтона Rokeacha”, *Studia Philosophiae Christianae*, no. 19/1 (1983): 224–231.

17 Marcin Wielec, *Wartości – analiza z perspektywy osobliwości postępowania karnego*, 149–277.

The criteria for distinguishing praxeological values within the scope of criminal procedure are as follows: 1) the specific nature of the already established autotelic values, such as human dignity, truth, justice, and the rule of law; 2) the specific nature of criminal procedure as a public-law procedure having a significant, authoritative impact on the rights of the individual; 3) the intrinsic nature of the values sought, which must be directed toward the realization of the autotelic values characteristic of criminal procedure, and thus, this nature must relate directly to the essence of praxeology¹⁸.

Autotelic values represent the quintessence of criminal procedure. The correct outcome of these proceedings – namely, the proper determination of the scope of criminal liability – should be the final act in the realization of these few autotelic values, harmonizing with the specific nature of the criminal process. In turn, praxeological values include trust, security, integrity, and morality. These values possess characteristics of instrumentalism and subsidiarity, providing support for the previously identified autotelic values. This passage serves, in a sense, as an introduction to demonstrating that preparatory proceedings are a domain of axiological tension, where various values intersect. The following sections will present how the judicial element in preparatory proceedings implements both autotelic and praxeological values¹⁹.

3. PREPARATORY PROCEEDINGS AS A DOMAIN OF AXIOLOGICAL TENSION

Preparatory proceedings are, in themselves, a controversial subject that provokes much discussion. Within legal scholarship, there are arguments for the superiority of the Anglo-Saxon model, which does not feature a distinct pre-trial stage within the criminal process²⁰. Even within the continental model, debates persist regarding its scope, structure, and role in relation to the trial stage – specifically, whether it should hold primacy or serve a subsidiary function²¹.

Furthermore, it is a unique area of the law-application process *sensu largo*, as it is dominated by law enforcement authorities (the prosecutor's office and other services), which entails inquisitorial features and confidentiality. Such a configuration of the preliminary stage of the criminal process renders it susceptible to axiological tensions, where one may identify the substrates of individual values – both autotelic and praxeological²².

18 Ibid.

19 Marcin Wielec, *Wartości – analiza z perspektywy osobliwości postępowania karnego*, 149–277.

20 Cezary Kulesza, *Sędzia śledczy w modelu postępowania przygotowawczego na tle porównawczym*: 19; Stanisław Waltoś, *Model postępowania przygotowawczego na tle porównawczym*: 98.

21 Piotr Kruszyński, Marcin Warchoń, „Pozycja sędziego śledczego na tle modeli postępowania przygotowawczego, cz. 1”, *Palestra*, no. 3–4 (2008): 49.

22 Marcin Wielec, „Aksjologiczne ujęcie postępowania karnego”, in *Ius Scientiam Persequitur. Księga jubileuszowa z okazji XXV-lecia Wydziału Prawa i Administracji Uniwersytetu Kardynała Stefana Wyszyńskiego w Warszawie*, eds. M. Badowski, J. Wesserling, L. Karski, (Warszawa: Wolters Kluwer 2025), 311–321.

Due to the broad privileges granted to law enforcement agencies, a noticeable inequality of parties exists in the preparatory stage. The *dominus litis* of the proceedings is either the prosecutor or the police (or other services) – depending on the form of the proceedings – and it is these bodies that possess the discretion to conduct the investigation and determine its course. Although the scope of adversarialism has been significantly expanded recently, granting certain rights to both the suspect and the victim, this remains insufficient. Organs equipped with the so-called sovereign *ius puniendi* continue to hold a structural advantage over the individual. Therefore, a strong role for the court in the preparatory proceedings is essential in this context. However, to exercise its attribute of independence and to, in a sense, lend credibility to this stage of the process, the court must be equipped with appropriate competencies that ensure operational effectiveness²³.

The fairness of the proceedings is another element that balances the conflicting interests within preparatory proceedings. It serves as a safety valve, mitigating the authoritative powers of state bodies by introducing a series of procedural guarantees aimed at achieving a just verdict. This standard, derived from international law, is particularly significant in states with complex and difficult histories regarding their criminal process – namely, the countries of the former Eastern Bloc, where a brutal break with legal tradition occurred after 1945. As a result of Stalinization, an inquisitorial model of preparatory proceedings was introduced, in which the prosecutor and security services enjoyed broad discretion²⁴. There were no guarantees for the suspect, the court played a facade role, and the victim was not a party to the proceedings. Unfortunately, certain elements attributable to the Soviet model have survived and continue to negatively influence contemporary criminal procedural legislation²⁵.

The institution of the court in preparatory proceedings – and the decision regarding its implementation – is in itself a domain of axiological debate. At one point, legal literature featured proposals advocating for the removal of the court from preparatory proceedings and the transfer of its functions entirely to an independent prosecutor, provided that such proceedings remained relatively brief and subsidiary to the main trial, where all evidentiary findings would be made²⁶. However, in the reality of the continental legal system, such an assumption is unfeasible. The court secures the proper conduct of the proceedings. Investigations and inquiries are often exhaustive and lengthy; therefore, the court must be present to ensure their rule of law, timeliness, and adherence to procedural guarantees as an independent arbiter – both in the *in rem* and *in personam* phases²⁷.

23 Piotr Kruszyński, Marcin Warchoń, „Pozycja sędziego śledczego na tle modeli postępowania przygotowawczego, cz. 1”: 49.

24 Krzysztof Eichstaedt, *Rola sądu w postępowaniu przygotowawczym a instytucja sędziego śledczego*, 73.

25 Ryszard A. Stefański, „Model postępowania przygotowawczego; dotychczasowe zmiany i wnioski de lege ferenda”, *Ius Novum*, no. 5 (2014): 81–92.

26 Mieczysław Siewierski, „Koncepcja kodyfikacyjna postępowania przygotowawczego”, *Problemy Kryminalistyki*, no. 29 (1961).

27 Piotr Kruszyński, Marcin Warchoń, „Pozycja sędziego śledczego na tle modeli postępowania przygotowawczego, cz. 1”: 49

The points of contact within preparatory proceedings presented above are but a selection of the areas where axiological tensions and intersecting values manifest themselves. I have outlined the institution of the judicial element in preparatory proceedings, which, on one hand, serves as a vehicle for values in its own right, and on the other, determines the realization of certain values at the expense of others. Consequently, it is necessary to delineate the framework of this institution.

4. THE ROLE OF THE JUDICIAL INVOLVMENT IN PREPARATORY PROCEEDINGS

Complementary to the explanation of the concept of values within the perspective of criminal proceedings and the presentation of preparatory proceedings as a domain of axiological tension will be the examination of the role of the judicial element in preparatory proceedings. Only in this way will it be possible to provide a comprehensive presentation of the axiological perspective, i.e., to demonstrate that the individual institutions forming the model of judicial intervention in preparatory proceedings implement specific values.

This issue may be analysed from two perspectives: institutional and functional. The institutional approach to the role of the court is limited to defining the institutional form in which the court appears in preparatory proceedings. In turn, the functional aspect comprises the catalogue of judicial acts, derived from the provisions of criminal procedure, which the court has at its disposal within a given model²⁸.

Currently, there are three available institutional solutions within European models of preparatory proceedings. Crucially, each of them satisfies the minimum standards of the Council of Europe derived from the European Convention on Human Rights regarding judicial intervention in preparatory proceedings²⁹.

The first solution is the institution of an investigating judge conducting preparatory proceedings³⁰. This institutional variant assumes a division of preparatory proceedings into two forms: investigation and inquiry. In this case, an investigation, as a more formalized form reserved for a specific catalogue of serious crimes, is conducted by an investigating judge. Conversely, for other cases, a simplified form of inquiry is appropriate, where the *dominus litis*, depending on the adopted concept, may be the prosecutor, the police, or other competent investigative bodies³¹. The investigating judge performs judicial acts reserved exclusively for them in the in-

28 Tomasz Bojanowski, Marcin Wielec, „Sąd jako gwarant praworządności postępowania przygotowawczego”, *Consilium Iuridicum*, no. 4 (12) (2024): 115–142.

29 Tomasz Bojanowski, „Selected Standards of Preparatory Proceedings in European Legal Systems”: 5–21.

30 Krzysztof Eichstaedt, *Rola sądu w postępowaniu przygotowawczym a instytucja sędziego śledczego*, 73.

31 The Polish model of pre-trial proceedings does not provide for the institution of an investigating magistrate; instead, it provides for a division into two forms: an investigation conducted by a prosecutor and an inquiry conducted by the Police or other agencies. Attention should be drawn to the fact that approximately 80% of proceedings in Poland are conducted in the form of an in-

quiry. It must be emphasized that the classical institution of the investigating judge, characteristic of the 1808 Napoleonic Code of Criminal Procedure, does not exist in contemporary models; however, this does not alter the fact that a modernized form of this institution can be found in France, Spain, Hungary, the Netherlands, Belgium, and Greece³².

The second variant involves a specialized judge assigned to perform specific acts in preparatory proceedings, conventionally referred to as a 'pre-trial judge'³³. This institutional variant is generally regarded as the successor to the traditional investigating judge; it is based on enhancing the adversarial nature of preparatory proceedings by shifting the judge's role from preparatory-investigative functions to jurisdictional-supervisory ones. This magistrate is referred to as a 'judge for preparatory proceedings' (also known as a 'judge for investigation' or 'judge for inquiry,' depending on the adopted classification of procedural forms)³⁴. Powers related to criminal prosecution and indictment are transferred to other bodies, such as the prosecutor's office and the police. The primary advantage of this model is the introduction of a specialized judicial body into the preparatory stage, reserved for the majority of decision-making and supervisory functions, while possessing limited evidentiary powers. Furthermore, this judge is precluded from participating in the adjudication of the case at the jurisdictional stage if they have previously performed acts in the preparatory proceedings. This solution was first introduced in Germany in 1975 and currently exists in countries such as Italy, Switzerland, Croatia, Slovakia, and Serbia³⁵.

The third option assumes the functioning of a court that is competent to perform specific judicial acts during the preparatory proceedings (a court possessing both subject-matter and territorial jurisdiction)³⁶. The most prevalent rule is that, in principle, this is the court competent to adjudicate the case in the first instance. However, specific provisions of criminal procedural law may contain exceptions regarding actions that infringe upon civil rights and liberties, such as pre-trial detention or the European Arrest Warrant³⁷. This institutional solution is found, among others, in Poland, Austria, and the Czech Republic.

Institutional grounding is significant for the functioning of a model, but it does not ultimately determine its final shape. The functional aspect – namely, the cata-

quiry, and in the case of the remaining 20% of investigations, we often see the delegation of cases to the Police or other agencies.

32 Albert Pol, „Informacja na temat pozycji procesowej, zakresu działania, kompetencji i uprawnień sędziego śledczego w Grecji, Hiszpanii, Holandii i Portugalii”, *Zeszyty Prawnicze BAS*, no. 3(27) (2010): 156–164.

33 Krzysztof Eichstaedt, *Rola sądu w postępowaniu przygotowawczym a instytucja sędziego śledczego*, 13–21.

34 Leon Schaff, *Zakres i formy postępowania przygotowawczego*, (Warszawa: PWN, 1961).

35 Łukasz Wiśniewski, „Sędzia dochodzenia w niemieckim postępowaniu karnym”, *Państwo i Prawo*, no. 12 (2011): 56–67.

36 Karolina Malinowska-Krutul, „Czynności sądowe w postępowaniu przygotowawczym”, *Prokuratura i Prawo*, no. 10 (2008): 65–66.

37 Jacek Sobczak, „Europejski Nakaz Aresztowania – dylematy i wątpliwości. Perspektywa polska”, *Rocznik Integracji Europejskiej*, no. 2 (2008): 21–42.

logue of acts assigned to the court – is of crucial importance. It must be emphasized that this catalogue does not have a single approved form derived from international law. Significantly, legal scholars themselves are not in agreement regarding its classification³⁸. Consequently, there is no single binding taxonomy of these acts in legal theory. However, for the purposes of this article, the authors will adopt a classification of judicial acts into decision-making, supervisory, and evidentiary acts³⁹.

Decision-making acts form the core of judicial activity during preparatory proceedings. They may interchangeably be referred to as authorization, adjudicatory, guarantee, jurisdictional, or *ex ante* supervisory acts. They consist of the requirement that law enforcement authorities must obtain judicial approval before performing a specific action, as such actions significantly infringe upon civil rights and liberties⁴⁰. Consequently, the court always acts upon the motion of an authorized body and issues its decision in the form of a formal order. In current models of preparatory proceedings, these constitute the broadest catalog of judicial acts.

Supervisory acts are *ex post* in nature. This means that they follow actions previously performed by the prosecutor's office or the police. These prior actions could have been police, prosecutorial, or judicial in nature – depending on the authorizations required by the provisions of criminal procedural law. These acts consist of the court's review of appeals (complaints) lodged against previously issued orders or directives authorizing the aforementioned actions⁴¹. Such acts underscore the court's supervisory role in ensuring compliance with the rights and liberties of the individual within a pre-trial stage dominated by law enforcement authorities.

Evidentiary acts, also referred to as investigative or inquiry acts, are strongly associated with the aforementioned institution of the investigating judge. They consist of the court performing specific procedural acts of an evidentiary nature – predominantly, these involve the examination of individuals belonging to certain privileged groups or actions taken in the event of a potential loss of evidence⁴². Depending on the legal system, this catalogue may also be extended to include other actions, such as exhumations. In legal literature, there are arguments suggesting that the court's evidentiary acts should be eliminated from preparatory proceedings, or at most, permitted only as an exception⁴³. Furthermore, they are sometimes described as the equivalent of the investigating judge institution or explicitly referred to as the institution of the investigating judge in a limited scope⁴⁴.

38 Michał Kurowski, Paweł Sydor, „Śledcze” czynności sądowe w postępowaniu przygotowawczym w aspekcie praktycznym”, *Przegląd Sądowy*, no. 1 (2011): 101.

39 Karolina Malinowska-Krutul, „Czynności sądowe w postępowaniu przygotowawczym”: 65–66.

40 Marcin Wielec, Tomasz Bojanowski, „Przesłuchanie świadka w procesie karnym w trybie art. 185e Kodeksu postępowania karnego”, *Prawo w Działaniu*, t. 57 (2024): 147–163.

41 Stanisław Waltoś, Piotr Hofmański, *Proces karny – zarys systemu*, (Warszawa: Wolters Kluwer, 2020): 529.

42 Krzysztof Eichstaedt, „Przesłuchanie świadka w postępowaniu przygotowawczym przez sąd”, *Przegląd Sądowy*, no. 7–8 (2003): 161–166.

43 Tomasz Grzegorzczuk, Janusz Tylman, *Polskie postępowanie karne* (Warszawa: Wolters Kluwer 2022): 807–922.

44 Michał Kurowski, Paweł Sydor, „Śledcze”: 101.

Due to the general nature of this study, the authors have endeavoured to avoid references to specific procedural institutions expressed in, for example, the Polish or Serbian Codes of Criminal Procedure. Furthermore, given the study's limited scope and the adopted thesis, a broader discussion of the catalogs of judicial acts in preparatory proceedings, as well as the historical evolution of the court's institutional role at this stage, would be inadvisable. Beyond the scope of this analysis are also acts related to so-called 'transitional proceedings'⁴⁵ and the criminal 'pre-trial' phase, i.e., operational-reconnaissance activities⁴⁶. This section aims to present this institution, which is strongly characterized by axiological implications, within the framework of the research area that is preparatory proceedings.

5. THE JUDICIAL INVOLVEMENT IN PREPARATORY PROCEEDINGS AND THE REALIZATION OF AUTOTELIC VALUES

Having fully illustrated the subject at hand, it is now possible to proceed to the *meritum* – namely, demonstrating that the judicial element in preparatory proceedings serves to realize specific values. Regarding autotelic values, one must begin with human dignity, which constitutes the core of human rights and freedoms. In the initial stage of criminal proceedings, dominated by law enforcement authorities, it is the independent court – subject only to the Constitution and statutes – that serves as the ultimate barrier protecting participants and parties (the suspect and the victim) from instrumental treatment, disproportionate interference with their rights and liberties, and excessive repression. Examples of this include the court's decision-making acts, such as pre-trial detention, judicial wiretapping, or the freezing of assets.

The next value is the rule of law. In the authors' view, a broad involvement of the judicial element in preparatory proceedings is the best guarantor of rule-abiding preparatory proceedings, due to the attribute of judicial independence. This value manifests itself in all judicial acts – decision-making, supervisory, and evidentiary. However, supervisory acts require broader attention, as they correct the actions of the prosecutor's office and other services to ensure they comply with criminal procedural regulations, for instance, through the review of complaints against orders such as those concerning pre-trial detention.

Turning to justice, it must again be emphasized that judicial independence is paramount. It is precisely this independence that enables the court to remain impartial when assessing the grounds for performing specific acts or when reviewing appeals. As an institution within preparatory proceedings, the court fosters a public perception that the proceedings are conducted fairly, regardless of the final outcome.

45 Marian Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne* (Warszawa: PWN, 1984): 54–55; Stanisław Waltoś, Piotr Hofmański, *Proces*: 505.

46 Tomasz Bojanowski, *Istota i przeznaczenie karnoprocesowe czynności operacyjno-rozpoznawczych*, (Lublin: Episteme, 2023).

In principle, the court is not predisposed to make evidentiary findings during preparatory proceedings; however, criminal procedural provisions introduce exceptions to safeguard the proper course of the process. In such instances, the court acts as an institution that realizes the value of truth by verifying evidentiary material – for example, through the examination of a minor witness, the examination of persons with special needs, or prior to the application of pre-trial detention.

6. THE JUDICIAL ELEMENT IN PREPARATORY PROCEEDINGS AND THE REALIZATION OF PRAXEOLOGICAL VALUES

Turning to the realm of praxeological values, it must be noted that the involvement of an independent body in preparatory proceedings – where the prosecutor or an authorized investigative body acts as the *dominus litis* – serves as the cornerstone of public trust in the administration of justice. Furthermore, it represents a manifestation of trust in the democratic rule-of-law state, particularly in the specific situation of a conflict between the suspect and law enforcement authorities.

The court also serves as an institution tasked with protecting the interests and well-being of both participants and parties to the preparatory proceedings. This is manifested in judicial acts aimed at preventing or counteracting abuses by law enforcement authorities.

The final praxeological values realized through the judicial element in preparatory proceedings are morality and integrity. This is expressed in the requirement that the conduct of judges must be characterized by the highest moral and ethical standards. Furthermore, the court should serve as a guarantor of these values throughout the entire administration of justice.

7. CONCLUSIONS

The analysis presented above, situated at the intersection of preparatory criminal proceedings and legal values, leads to the conclusion that the institution of judicial involvement in the preparatory stage is decisive for the social legitimacy and authority of criminal proceedings. Without the participation of the court in preparatory proceedings, the criminal process model would inevitably slide into mere technicalism and authoritarianism, thereby precluding the realization of its underlying axiological purpose.

Therefore, proposals aimed at strengthening judicial intervention in preparatory proceedings are justified, as the court serves as the ultimate guarantor of these values. It should be emphasized that while the choice of an institutional framework is not of primary importance, it may nonetheless influence the intensity with which specific values are realized. The catalogue of judicial acts appears to be the most critical factor. Consequently, it is advisable to expand the scope of judicial decision-making acts in cases involving interference with civil rights and liberties. Further-

more, attention must be given to evidentiary acts, specifically by skilfully adapting their catalogue to the realities of the criminal process.

The authors of this study advocate for the introduction of an investigating judge institution into the Polish model of preparatory proceedings, along with a significant expansion of the catalogue of judicial acts. Furthermore, the current division of preparatory proceedings into two forms – investigation and inquiry – requires revision, as it remains largely fictional in practice. Consequently, efforts should be directed toward constructing a new model of preparatory proceedings with a reinforced judicial element, which would both draw upon sound Polish procedural traditions and fully implement international standards.

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AKSIOLOGIJA UČEŠĆA SUDA U PRIPREMNOG POSTUPKU U SVETLU MODELA KRIVIČNOG POSTUPKA

REZIME

Rad se bavi učešćem suda u pripremnom postupku u okviru kontinentalnih pravnih sistema iz aksiološke perspektive. Ovu fazu postupka, kojom dominiraju organi za sprovođenje zakona, po prirodi karakterišu represivnost, tajnost i nejednakost procesnih strana, zbog čega je ona posebno podložna aksiološkim napetostima. Osnovni cilj autora jeste da pokažu da intervencija suda predstavlja ključni instrument za garantovanje ostvarivanja vrednosti u krivičnom postupku, a ne samo tehnički mehanizam nadzora. Koristeći dogmatsko-pravni i teorijsko-pravni metod, u radu se razlikuju tehnički i aksiološki ciljevi krivičnog postupka. Potonji se određuje kao ostvarivanje vrednosti, koje se razvrstavaju na autotelične (ljudsko dostojanstvo, vladavina prava, pravda, materijalna istina) i prakseološke (poverenje, sigurnost, integritet, moral). Analizom su obuhvaćena tri evropska institucionalna modela: istražni sudija (*juge d'instruction*), sudija za pripremni postupak i sud nadležan za suđenje (kao u Poljskoj). Funkcionalno posmatrano, prisustvo suda zasniva se na odlučujućim, nadzornim i dokaznim radnjama. Nezavisan sud ostvaruje autotelične vrednosti štiteći pojedince od autoritarizma države, a prakseološke vrednosti podsticanjem poverenja javnosti u pravosuđe. Zaključno, autori iznose predloge *de lege ferenda* za Poljsku, zalažući se za ukidanje suviše razlike između istrage i istrage kao posebnih oblika pripremnog postupka, proširenje ovlašćenja suda u odlučivanju i uvođenje specijalizovanog sudije za pripremni postupak.

Ključne reči: pripremni postupak, učešće suda (sudski element), aksiologija, vrednosti krivičnog postupka, sudija za pripremni postupak.

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