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**THE MODEL OF THE MAIN HEARING
IN THE POLISH CRIMINAL PROCEEDINGS**

SUMMARY

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The dissertation describes the role and importance of the main hearing in the Polish criminal process.

Main hearing is one of the key institutions of criminal proceedings. It is a jurisprudence forum, in which the court of first instance, at a specific place and time, decides on the subject of the indictment.

The hearing called the "main" was introduced to the Polish criminal process by the Code of Criminal Procedure of 1928, as an institution used to issue a decision by the court of first instance confirming the legitimacy of the indictment as to the guilt and criminal liability of the accused. The main criterion distinguishing the main hearing from other hearings was that the hearing was accessible to the parties and the public. The court decided the case in this forum in accordance with the principles of openness, orality and immediacy. The taking of evidence at the main hearing was aimed at determining by the court, on the basis of a free assessment of the evidence, the truth as to the guilt and the grounds for holding the accused criminally liable. At that time, main hearing was the only forum intended for the court to adjudicate on the criminal liability of the accused.

The Code of Criminal Procedure of 1997 still emphasizes the special nature of the main hearing before the court of first instance in cases of crimes. Meanwhile, the importance of this institution is steadily decreasing. More and more often it happens that the court decides the case of the accused not at the main hearing, but at the sitting. In this forum, the implementation of procedural guarantees reserved for the main hearing is limited or excluded. This applies to settlements concluded by the parties resulting in a faster conviction. This encourages the parties to accept a possible limitation of procedural guarantees in connection with the failure to examine the case at the main hearing. Important issue to consider was the name of the main hearing and its meaning. It was imperative to answer the question whether the hearing should still be referred to as "main", since the legal status has changed. It was also desirable to determine whether maintaining the main hearing in the Code of Criminal Procedure is still essential, and if so, in what cases. For this purpose, it was needful to the examine characteristics of the main hearing, its structure and functioning. It was also necessary to analyse the current regulations governing the course of the main hearing in order to verify the thesis that this forum guarantees the implementation of basic procedural rules and convention standards. Next, it was necessary to answer the question whether the

traditional division of the main dissertation into four stages is still necessary, or whether in some situations it is possible to abandon some of its stages or their elements.

The issue of the role and meaning of the main trial was not the subject of a monograph covering a broader aspect of research on the basis of the current Code of Criminal Procedure. For this reason, it was advisable to make this issue the subject of a doctoral dissertation.

The dissertation consists of the introduction, seven chapters and a conclusion. In the doctoral dissertation various research methods were used: historical, logical-linguistic, and legal argumentation.

First -historical chapter describes the changes in the main hearing since 1928.

The next chapter is devoted to the key issues determining the scope and type of issues covered by the subject of the dissertation. The meaning and role of the main hearing are brought closer by issues referring to the origins of this institution, its nature as a judicial forum for settling criminal liability, as well as its relation to court sittings.

Another issue concerns the preparatory proceedings because aims of preparatory proceedings affect the form of main hearing. Issues relating to the scope of the preparatory proceedings and the form of preserving evidence in this phase are important here. The more the case is clarified in the preparatory proceedings and the more thoroughly the evidence is recorded, the more the judgment is based on the prosecutor's materials. Such a way of adjudicating on the criminal liability of the accused raises objections in terms of the fairness of the trial. A fair trial requires that the evidence submitted at the main hearing determine the content of the verdict. Opposing parties should actively participate in these proceedings. The judge, on the other hand, should be passive and his role should only be to evaluate the evidence presented by the opponents of the proceedings. The position of the prosecutor at the main trial should be equal to that of the accused. The third chapter of the dissertation is devoted to these issues.

The fourth chapter discusses the rules and procedural standards governing the proceedings at the main hearing. These are, in particular, principles such as: openness, immediacy, adversarial, orality, the right to defence or equality of arms.

First of all, it was established that the importance of the adversarial principle, immediacy and orality in the taking of evidence before the court would be reduced. An important issue is also the procedural regulations that may violate the standard of equality of arms, because the legislator systematically introduces further provisions strengthening the procedural position of the prosecutor, not only towards the accused, but also towards the

court. Doubts are also raised by the legislator's introduction of the principle of the prosecutor's absence at the main hearing (Article 46 section 2 of the Code of Criminal Procedure). The consequence of such a solution is the requirement for the judge to take over some of the prosecution functions, such as presenting the indictment and taking evidence of the indictment, which is contrary to the principle of impartiality of the court.

In particular, an attempt was made to present various theories regarding the principles of law in order to determine the optimal model of the relationship between the judge's activity at the main trial and the obligation to base the judgment on true findings. In the same aspect, the effects of taking evidence before the court were assessed on the basis of the adversarial principle.

The fifth chapter covers issues related to the course and role of the main hearing as a forum for adjudication by the court through the prism of constitutional requirements, as well as those of Strasbourg standards. The right to a court, exercised at a hearing, is guaranteed in particular by Article 45 section 1 of the Polish Constitution, this norm significantly affects the functions and course of the main trial. At the same time, it identifies the procedural guarantees that must be provided by the judicial adjudication forum. The consequence of the international commitments adopted by Poland is the requirement to correlate national regulations with European standards. Findings in this regard were made possible by the jurisprudence of the European Court of Human Rights in Strasbourg (ECtHR). The jurisprudence base created by the Strasbourg Tribunal is particularly correlated with the subject of this work, as it refers to the standards of a fair trial carried out primarily at a main hearing, as referred to in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The analysis of the judgments of the Constitutional Tribunal and the ECtHR allowed to make findings as to the necessity or not to maintain the current division of adjudication forums, their desired properties and shape.

The sixth chapter covers issues related to the four-stage course of the main trial, which is provided for by the Code of Criminal Procedure

The main hearing consists of four parts. The first phase is the start of the main hearing. Here, the judge checks whether all litigants and other entitled persons have appeared. If there are no legal obstacles, the second phase of the hearing, called judicial proceedings, begins. This stage begins with the presentation of the indictment by the prosecutor. This is followed by the interrogation of the accused. The accused may remain silent or give an explanation. Then other evidence is presented. The most important thing is to hear witnesses to whom the prosecutor, defender and accused can ask questions. Documents are also disclosed to judges.

At the end of the evidentiary proceedings, the president of the court announces the closure of the court proceedings. This is followed by the third stage of the hearing, called final votes. Here, all parties to the trial give speeches. The defender and the accused always speak at the end. This is important because judges are supposed to focus on recent speeches favourable to the accused. The fourth, final stage of the main hearing is the judgment. In this part, the presiding judge announces the judgment. He reads the operative part of the judgment and informs the present litigants of the right and time limit to appeal. The last step is for the presiding judge to announce the closure of the main hearing.

Particular attention was required here to the elements determining the model of the main hearing in the aspect of successive amendments to the Code of Criminal Procedure in 2015 and 2016 towards increased adversarial nature and then resignation from these changes.

The dissertation answers the question whether each of the four parts of the main hearing is necessary. The answer to this question is positive. Each of these parts is important and has a special function to make the court's verdict fair. The exception here is a shortened hearing, when the defendant uses the consensual procedure and applies for a conviction and imposition of a penalty agreed with the other parties, where the stage of final votes is unnecessary.

The seventh chapter of the dissertation was devoted to the new code regulation in the form of the main dissertation conducted remotely. Conducting the main hearing in the form of a videoconference should, in essence, be assessed as an indispensable institution within the framework of criminal proceedings. However, it should be treated as a solution extending the right of litigants to court, not limiting it.

The direction of the findings made in this dissertation indicates that the model of court proceedings that meets the above requirements is a model based on the principle of material truth, but also on the fairness of the trial, where the court plays primarily the role of an arbitrator. The construction of the main hearing, where the court (chairman of the adjudicating bench) simultaneously performs various procedural functions and shapes the evidence proceedings, is opposed to the achievement of the goals of criminal proceedings in the form of achieving a state of justice, both substantive and procedural.

The research methods used in this doctoral dissertation have shown that the main hearing should be the primary forum for adjudication in criminal cases. The name, the role, and the position of this institution, in Polish criminal process, are unquestionable. Historical tradition and normative considerations provide arguments for the continuation of the main

hearing in criminal proceedings in disputes between opposing parties. It seems to be the most important challenge to domestic legislators and judicators to establish the position of this forum, as a guarantee of fairness in all criminal proceedings.