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The Inclusion of the Social Factor in Polish Criminal Proceedings

ABSTRACT: *This study analyses the inclusion of the social factor in Polish criminal proceedings, focusing on its significance for the principle of publicity and social oversight of the judiciary. It discusses case law concerning the openness of proceedings, highlighting its impact on procedural practice and the interpretation of legal provisions. Moreover, it presents the role of social organisations and social representatives in criminal proceedings, emphasising their competencies and importance in protecting the public interest. Further, it focuses on the institution of lay judges, examining their influence on the functioning of the judiciary and the challenges related to their participation in adjudication. It is emphasised that the social factor enhances the transparency of proceedings and public trust in the justice system. However, its effectiveness depends on appropriate mechanisms ensuring its efficiency and impartiality.*

KEYWORDS: *social factor, transparency, criminal proceedings, lay judges, public oversight.*

1. Introduction

Considering the historical practices in ancient Rome, where the principle of public criminal proceedings was a cornerstone of the justice system and ensured social oversight of judicial processes, modern legal systems, including the Polish legal system, strive to balance transparency with the protection of participants' privacy. The openness of trials plays a crucial role in building public trust in the judiciary; however, its implementation must also consider other values, such as the right to privacy and the protection of personal data. The Polish legislator defines the role of the social factor within the legal system at the constitutional level.

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¹ However, it does not specify which proceedings should be accessible to the public and which may be conducted without public participation, leaving this matter to statutory regulations and judicial rulings.²

However, the mere inclusion of the social factor in the justice system is insufficient to guarantee full transparency in criminal proceedings. The manner in which the legislator defines the scope of trial publicity and the conditions under which it may be restricted is crucial. The principle of openness is a fundamental rule of criminal procedure in the Polish legal system. However, in certain situations, it may be limited owing to other values, such as the protection of private interests, the safety of trial participants, or the necessity to safeguard state secrets. The open nature of court hearings enables social oversight of the judiciary, strengthens public trust in the courts, and helps eliminate potential abuses. However, complete transparency is not always desirable – sensitive information disclosed during proceedings may violate the privacy of the parties involved, influence the course of the trial, or pose a threat to the public interest. Therefore, the legislator has provided for situations in which the publicity of a hearing may be excluded or restricted, with the court having the authority to decide in such cases. Thus, determining the openness of proceedings requires maintaining a balance between the public's right to access information about the trial and the need to protect other legal values.³

An important manifestation of society's participation in the justice system is the presence of social organisations, social representatives, and the institution of lay judges in criminal proceedings. Their role primarily involves strengthening social oversight of judicial processes, supporting the parties involved in proceedings, and ensuring that justice is administered with due regard for the public interest. Their participation serves as a mechanism for the democratisation of the judiciary, ensuring that court rulings consider not only legal aspects but also societal values and expectations. The contemporary debate on their role focuses on their effectiveness, independence, and actual influence on the course of proceedings, raising the question of the optimal model for public engagement in criminal trials.⁴

The contemporary challenges related to the functioning of the social factor in criminal proceedings stem not only from the need to reconcile transparency with the protection of individual rights but also from dynamic social and technological changes. The digitalisation of the judiciary, the development of the media, and growing expectations regarding transparency have brought a new dimension to the principle of openness. Society, as a stakeholder in the proper functioning of

1 Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997 No. 78, item 483).

2 Gerecka-Żołyńska et al., 2022, pp. 70-85; Czarny et al., 2024, pp. 399-402.

3 Jabłońska-Bonca and Zieliński, 1988, pp. 47-49; Wolska-Bagińska, 2018, pp. 23-36; Gerecka-Żołyńska et al., 2022, pp. 318-323.

4 Juchacz, 2016, pp. 155-168; Jakubik, 2014, pp. 101-109.

the courts, increasingly demands greater access to information about legal proceedings, as evidenced by calls for live broadcasts of hearings and broader participation of social representatives in the adjudication process. The role of the social factor in Polish criminal proceedings is not merely a theoretical concept but a tangible element shaping the justice system. However, in practice, questions arise about the effectiveness and actual influence of citizens on the judicial process.

2. The Importance of the Social Factor for Transparency and Social Oversight in Criminal Proceedings

The openness of criminal proceedings and the inclusion of the social factor in the functioning of the justice system are fundamental pillars of a democratic state governed by the rule of law. They influence both the legitimacy of judicial decisions and the manner in which society perceives justice. The public nature of court proceedings enhances the transparency of judicial actions, enables oversight of judicial decisions, and fosters public trust in the institutions of justice. In a state governed by law, where courts must remain independent and free from political pressure or arbitrary decisions, social oversight serves not only a preventive function but also an educational and integrative one. A society that can observe and assess the activities of judicial bodies tends to exhibit greater trust in public institutions, thereby strengthening the values of the rule of law and justice. Moreover, the transparency of proceedings is crucial in the context of protecting individual rights. The public nature of trials allows for the verification of procedural fairness, reduces the risk of abuses by judicial authorities, and increases the accountability of judges and prosecutors for their decisions. Further, it enables the parties and their legal representatives to more effectively defend their interests by ensuring access to case files and participation in key stages of the proceedings. Consequently, transparency serves a protective function, guaranteeing the parties the right to a fair and impartial trial. Simultaneously, it counteracts the judiciary's closed and insular character, allowing for social oversight and ensuring adherence to high procedural standards.⁵

Citizen participation in the functioning of the justice system is a key aspect of the democratisation of judicial processes. Modern legal systems provide for various forms of social participation, which strengthen oversight of the judiciary and enhance its accessibility to the public. In the Polish legal system, the social factor is primarily manifested through the participation of lay judges in adjudication, the activities of social organisations advocating for the protection of the public interest, and the presence of the public and media in court hearings. Each of these forms of

5 Gerecka-Żołyńska et al., 2022, pp. 70-85; Maziarz, 2023, pp. 18-19; Kostro, 2016, pp. 97-110.

participation serves a distinct yet complementary role, contributing to greater transparency in proceedings and reinforcing public trust in the judiciary. The involvement of lay judges in adjudication is intended to enhance oversight of judicial decisions and counteract the excessive insularity of the legal profession. Meanwhile, social organisations participate in court proceedings as entities working to protect the public interest. Their activities primarily focus on areas related to human rights protection, consumer rights, and environmental protection. Moreover, the presence of the public and media at hearings is a crucial element of social oversight in the justice system. The ability of mass media to report on court proceedings contributes to greater transparency and allows the wider public to assess how the judiciary operates. Further, the media serve a preventive function, encouraging judicial authorities to adhere to the highest standards of fairness and impartiality. However, media coverage of trials must maintain a balance between access to information and the protection of the rights of individuals involved in the proceedings.⁶

The principle of transparency in criminal proceedings is enshrined in both constitutional and international legal provisions. Article 45(1) of the Constitution of the Republic of Poland (hereinafter, the Constitution) guarantees everyone the right to a fair and public hearing by an independent and impartial court. This underscores the significance of openness as one of the pillars of a democratic state governed by the rule of law, serving as a mechanism for overseeing the judiciary.⁷ Similarly, Article 182 of the Constitution states that the participation of citizens in the administration of justice shall be determined by statute.⁸ In addition to constitutional norms, the principle of transparency is reflected in the procedural provisions of the Code of Criminal Procedure (CCP).⁹ Article 355 of the CCP establishes the public nature of court hearings as a general principle, stating that any exceptions to this rule may arise only from statutory provisions. Article 356 of the CCP further defines the category of individuals entitled to attend public hearings while also introducing certain restrictions in this regard. According to Article 356 § 1 of the CCP, access to a court hearing is granted only to adults and unarmed individuals. This provision aims to ensure order in the courtroom and eliminate potential security threats. Additionally, Article 356 § 2 of the CCP allows the presiding judge to permit minors and individuals authorised to carry weapons owing to their official duties to attend proceedings. In specific circumstances, the legislator has also provided for the exclusion of the public from hearings. Article 356 § 3 of the CCP excludes individuals whose behaviour is incompatible with the dignity of the court from attending proceedings. This regulation serves to

⁶ Kil, 2021, p. 12; Juchacz, 2016, pp. 155-168.

⁷ Chmielarz-Grochal, 2016, pp. 67-101.

⁸ Kielin-Maziarz, 2024, pp. 69-82.

⁹ The Act of June 6, 1997 – Code of Criminal Procedure (Journal of Laws 1997 No. 89, item 555); Dudka et al., 2023, pp. 816-825.

prevent disruptions during the trial while safeguarding the authority and integrity of the judiciary. Clearly, considering these provisions, the principle of openness in the Polish legal system is not absolute. It is structured in a manner that ensures public access to judicial proceedings while maintaining a balance between transparency and the requirement to protect the dignity and proper conduct of the trial.¹⁰ The doctrine distinguishes two aspects of the openness of court hearings: internal and external transparency. Internal transparency is a principle that applies exclusively to the parties to the proceedings and individuals cooperating with them. It ensures that the parties have access to case files and the ability to participate in evidentiary proceedings. In this context, the principle of openness is closely linked to the right to a fair trial and the principle of due process.¹¹

The solutions adopted in the Polish legal system regarding the transparency of criminal proceedings apply not only to the course of the trial but also to the manner in which the case is concluded and the judgment is announced. The openness of the process cannot be limited solely to the courtroom stage; it should also include the accessibility and public nature of the final ruling. The public announcement of the judgment is as important as the transparency of the proceedings. The pronouncement of a verdict is not merely a matter of reading it aloud in the presence of the parties and the audience in the courtroom. It includes the possibility of accessing the ruling at the court's premises and, in cases of particular significance, its publication in official collections of judicial decisions. Such accessibility serves not only to enhance judicial transparency but also plays an educational role, helping citizens better understand the interpretation of the law and the mechanisms of the justice system. However, notably, not every ruling requires complete public disclosure. Although final judgments should be announced publicly, incidental decisions or rulings that do not directly impact the substance of the case may be communicated in a more limited manner. Not every decision issued during the course of proceedings is of significant public interest, and broad disclosure of purely technical or procedural determinations could lead to an unnecessary accumulation of information.¹²

The trend towards expanding the transparency of court judgments is reflected not only in national legal regulations but also in international standards. European Union regulations and the case law of the European Court of Human Rights (ECHR) emphasise the need to balance access to information on judicial rulings with the protection of individual rights. Particular importance is placed on the publication of judgment justifications, which not only enables the analysis of judicial reasoning and legal interpretation trends but also enhances the predictability of legal application

10 Czarnecki, 2017, pp. 21-37; Koper, 2019, pp. 129-152; Andrzej, 2018, pp. 489-503.

11 Koper, 2019, pp. 129-152.

12 Szczepaniak, 2024, pp. 1-13; Żywucka-Kozłowska and Dziembowski, 2022, pp. 95-103.

and increases public trust in the judiciary.¹³ In Poland, there is a visible process of modernising regulations on the transparency of proceedings, as observed in the increasing availability of court rulings through electronic systems. The digitalisation of judicial databases facilitates both the analysis of judgments by legal scholars and practitioners and citizens' access to current case law, thereby contributing to the improvement of legal awareness in society. Simultaneously, the development of digital media necessitates adjusting regulations to new challenges related to privacy protection for parties to proceedings and procedural security.¹⁴

3. Lay Judges in the Polish Judiciary – Significance, Influence and Challenges

Lay judges play a significant role in the Polish judicial system, serving a social function and reinforcing the democratic character of the judiciary. Their presence in adjudicating panels helps increase transparency in legal proceedings and introduces a civic perspective into the administration of justice. Lay judges embody the constitutional principle of public participation in the administration of justice, which aims to strengthen public trust in judicial institutions. They participate in both criminal and civil proceedings, adjudicating alongside professional judges in cases of particular importance. Their role extends beyond evaluating evidence – they are also involved in deciding on the defendant's guilt and determining the appropriate penalty.¹⁵

According to the Act of 27 July 2001 – Law on the Organisation of Common Courts, the regulations concerning lay judges are specified in Title IV, Chapter 7.¹⁶ The Act specifies, among other aspects, the appointment process for lay judges, the requirements that candidates must meet, as well as the scope of their competencies and duties. The participation of lay judges in adjudication serves to counteract the insularity of the judicial profession and ensures greater representativeness of the judiciary in relation to society. The inclusion of lay judges in judicial panels aligns with the concept of citizen participation in the administration of justice, thereby reinforcing its social character and enhancing public trust in the judicial system.

Despite the formal equality of votes between lay judges and professional judges, their actual influence on the administration of justice remains debatable. On the one hand, their presence in adjudicating panels enhances the legitimacy of court rulings and enriches jurisprudence with extra-legal aspects derived from the professional

¹³ Jaśkowska, 2020, pp. 205-236.

¹⁴ Piekarski, 2023, pp. 103-124.

¹⁵ Grudecki, 2022, p. 138; Ziółkowska, 2014, pp. 69-78.

¹⁶ The Act of July 27, 2001 – Law on the System of Common Courts (Journal of Laws 2001 No. 98, item 1070).

and life experiences of community members. On the other hand, a lack of legal training and unfamiliarity with complex procedures may result in lay judges following the position of the professional judge in practice, raising questions about the actual effectiveness of this institution. This is further influenced by the strong hierarchy within adjudicating panels, where the authority of the presiding judge often determines the direction of the ruling.¹⁷

In addition to concerns regarding the effectiveness of lay judges, this institution faces numerous challenges related to its organisation and functioning. A significant issue is the lack of substantive preparation for lay judges to perform their role. This stems from the absence of mandatory training and limited knowledge of judicial procedures, making it difficult for them to independently analyse evidence or decide in a completely autonomous manner. Another challenge is low attendance and limited engagement, as lay judges often need to take time off work to attend hearings. In many cases, this results in lay judges viewing their role as a mere formality, rather than as an opportunity to meaningfully contribute to the judicial process.¹⁸ Another challenge is the impact of lay judges on the length of court proceedings. Their participation necessitates detailed discussions within the adjudicating panel, which can contribute to prolonging trials. Longer deliberations and the need to explain complex legal issues to individuals without legal education may lead to an increase in judicial backlogs, contradicting efforts to streamline the justice system. Moreover, the selection process for lay judges is a matter of concern. They are appointed by municipal and city councils for a four-year term, which carries the risk of politicising the nomination process. Often, selection decisions are influenced not by actual competence or experience, but by political factors or local social networks. This raises questions about the objectivity and reliability of their participation in adjudication, particularly in cases involving socially controversial issues.¹⁹

In recent years, significant changes have been introduced to improve the quality of candidates for lay judges. The eligibility criteria have been expanded, allowing the nomination of individuals conducting business activities within the relevant municipality, while also specifying that municipal, county and provincial councillors cannot hold this position. Moreover, regulations regarding candidate nominations have been tightened – the number of citizens supporting a candidacy has been increased from 25 to 50, and the required documents have been clarified, including, among others, certificates from the National Criminal Register and medical certificates. Further, the obligation for police background checks of candidates has been reinstated to ensure that lay judges are individuals of impeccable reputation. Additionally, the

17 Kosonoga, 2016, pp. 83-101.

18 Krzyżewski, 2023, pp. 143-148.

19 Ławniczak, 2012, pp. 133-162.

procedure for the dismissal of lay judges has been revised – this is decided by the municipal council at the request of the president of the court, while the lay judge has the opportunity to present their position. The rules regarding the remuneration of lay judges have also been clarified, precisely defining the time during which they perform their duties. Despite these changes, the system of selecting lay judges raises doubts. Numerous proposals for reforming this institution have emerged, including the introduction of an examination for candidates, selection by courts from among local community members, or even the possibility of a random selection process among individuals meeting specific criteria. Another interesting concept is allowing candidates to be nominated by academic circles and public institutions, which could improve the competence and prestige of this role.²⁰

4. The Role of Social Organisations and Social Representatives in Criminal Proceedings

Social organisations play a crucial role in the Polish justice system, acting as social representatives and advocates of the public interest. Their presence in criminal proceedings reinforces the democratic nature of the judicial process by ensuring additional social oversight of the functioning of the justice system. The concept of a social representative is linked to the idea of *amicus curiae* (“friend of the court”), which originates from ancient Rome, where entities external to the trial could present their position in the public interest. In modern times, social organisations are not restricted in terms of the types of cases they may participate in. This allows them to engage in matters crucial to the protection of human rights, civil liberties, and the public interest. Consequently, their role extends beyond passive observation to include active participation in shaping the justice system.²¹

The participation of social organisations and their representatives in criminal proceedings is regulated by Articles 90–91 and 271 of the CCP. According to these provisions, there are two key prerequisites for allowing a social representative to participate in a court trial. The first prerequisite is the protection of the public interest or an important individual interest that falls within the statutory objectives of a given organisation. This may include cases related to the defence of human rights, protection of crime victims, or prevention of abuses of power. The second prerequisite is the interest of the justice system itself, meaning that the presence of a social representative should positively impact the course of the proceedings, contributing

20 ArsLege website [Online]. Available at: <https://arslege.pl/aktualnosci/jakie-zmiany-w-wyborze-lawnika>, 546 (Accessed: 25 January 2025).

21 Rybczyńska and Płoska-Pecio, 2005, pp. 99–115.

to their fairness and transparency. Both of these prerequisites form the basis for the involvement of social organisations in criminal proceedings, emphasising their role as institutions supporting the justice system and safeguarding social interests.²²

The procedural rights of a social representative, as derived from Article 91 of the CCP, encompass several key aspects. First is participation in the trial, which means the ability to have a direct impact on the course of proceedings through their presence in the courtroom. Second is the right to speak, allowing them to present arguments related to the case, which may contribute to a broader perspective on the issue. Additionally, the social representative has the right to submit written statements, enabling them to formally express their position and have it recorded in the case files. These rights grant social representatives an active role in criminal proceedings, allowing them to effectively represent social interests and influence the administration of justice. Beyond direct participation in criminal proceedings, social organisations may also engage in monitoring court proceedings, which constitutes an important element of social oversight of the justice system. Although the Code of Criminal Procedure does not explicitly regulate this function, the principle of trial transparency allows for the presence of observers in the courtroom. Monitoring aims to assess the fairness and correctness of proceedings and identify potential violations of civil rights or judicial procedures. This type of activity aligns with the concept of an open judiciary, which remains subject to social oversight, thereby strengthening public trust in judicial institutions.²³

An important aspect of the activities of social representatives is their ability to collaborate with one of the parties in criminal proceedings, which may take the form of advisory support or assistance in protecting the rights of the accused or the victim. In this context, judicial case law plays a crucial role, particularly the judgment of the Court of Appeal in Kraków dated 29 October 2003, which emphasised that 'it is not the court's role to control how participants in the proceedings exercise their rights, even if a social representative limits their activities to cooperating with the defense attorney of the accused'.²⁴ This means that social organisations can support one of the parties, provided that their actions comply with procedural rules. In practice, this may involve providing expert opinions, assisting the defence counsel of the accused, or engaging in activities aimed at protecting the rights of crime victims. The lack of strict limitations on the participation of social organisations in criminal proceedings allows them to play an active role in shaping the justice system, which is a significant expression of the democratic nature of the rule of law. The discretion granted to courts under Articles 90–91 of the CCP regarding the assessment of the legitimacy

22 Woźniewski, 2016, pp. 163–173; Kulesza and Kuźelewski, 2015, pp. 65–87.

23 Kil, 2022, pp. 50–68; Czarnecki, 2017, pp. 21–37.

24 Judgment of the Court of Appeal in Kraków of 29 October 2003, II AKa 175/03.

of their participation ensures that the mechanisms of cooperation between social organisations and the justice system can evolve in response to changing legal and social realities.²⁵

5. Case Law on the Transparency of Criminal Proceedings – Impact on Procedural Practice and Interpretation of Legal Provisions

The transparency of court proceedings is the foundation of a democratic legal system, playing a crucial role in both the proper functioning of the judiciary and the building of public trust in the courts. The openness of judicial processes not only enhances the public perception of justice but also serves a preventive function, reducing the risk of arbitrariness and abuses by judicial authorities. Public access to court hearings allows citizens, the media, and social organisations to monitor the course of proceedings, which translates into greater oversight of legal enforcement and strengthens the legitimacy of judicial decisions in the eyes of society. The case law of Polish courts of appeal consistently confirms that the transparency of criminal trials supports the realisation of the principle of a fair trial, which is a fundamental standard of European and international law, as expressed in Article 6 of the ECHR.²⁶ This principle guarantees that every accused person has the right to a fair and public hearing of their case by an independent and impartial court. In the context of this principle, restrictions on transparency may only occur in exceptional and justified cases, such as the protection of the privacy of trial participants, state security, or the protection of classified information.²⁷

The Court of Appeal in Szczecin, in its rulings, unequivocally emphasises that the transparency of the hearing is not merely a formal procedural requirement, but above all, a fundamental pillar of judicial transparency, ensuring the fairness of the trial and protecting the rights of the participants in the proceedings.²⁸ In particular, referring to Article 6 of the ECHR, the court emphasises that the principles of a fair trial should apply not only to criminal cases, but also to other proceedings concerning fundamental rights and freedoms of individuals. This interpretation extends the standards of a fair trial to lustration procedures, underscoring the need to provide the accused with genuine opportunities for defence. Regarding access to case files, the court explicitly opposes the practice of automatically classifying documents

²⁵ Woźniewski, 2018, pp. 168-177.

²⁶ Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950.

²⁷ Langford, 2009, pp. 37-52.

²⁸ Judgment of the Court of Appeal in Szczecin of 6 November 2014, II AKa 198/14.

produced by the communist security services as state secrets. It argues that such actions violate the principle of equality of arms and result in unequal treatment of the parties to the proceedings.

Restricting access to key materials for individuals undergoing lustration may lead to an inability to effectively defend themselves, thereby distorting the outcome of the trial, which is inconsistent with the fundamental standards of a democratic state governed by the rule of law.

The court further emphasises that the principle of transparency should encompass not only the public nature of hearings, but also access to case files, particularly in historical cases, where an open and transparent confrontation with the past is significant. This position aligns with a broader judicial trend advocating for minimising restrictions on the transparency of proceedings and ensuring equal access to evidence and procedural materials for all parties.

Furthermore, the Court of Appeal in Szczecin emphasises the crucial importance of the obligation to deliver a judgment along with its justification, stating that restrictions in this regard may only be applied in situations strictly defined by law. In particular, Article 100 § 5 of the CCP may be applied only when the transparency of the hearing has been excluded under Article 360 § 1(3) of the CCP, which pertains to the protection of classified information. The court unequivocally stresses that restrictions on access to the reasoning of a judgment must be based on specific statutory grounds and cannot be applied arbitrarily. Thus, it highlights the necessity of strictly adhering to the principle of proportionality when limiting trial transparency, ensuring that such limitations do not violate fundamental guarantees of a fair trial. The improper application of restrictions on access to judgment justifications may result in a situation where a party to the proceedings is deprived of the ability to fully oversee the trial process and effectively exercise their right to appeal. In judicial practice, the consistent application of these principles plays a vital role in ensuring the transparency and correctness of proceedings. The position of the Court of Appeal in Szczecin aligns with a broader trend aimed at eliminating unjustified restrictions on transparency and underscores the necessity of adhering to procedural rules as a safeguard for protecting the procedural rights of the parties.²⁹

The Court of Appeal in Gdańsk focuses on the importance of judicial transparency in the context of the public interest, emphasising that the openness of court proceedings not only serves as a guarantee of fairness and correctness of rulings, but also plays a key educational and oversight role in a democratic state governed by the rule of law.³⁰ Public access to information on the course of criminal cases enables societal evaluation of the judiciary's activities, thereby contributing to strengthening

²⁹ Szczechowicz, 2018, pp. 239-247.

³⁰ Judgment of the Court of Appeal in Gdańsk of 8 April 2015, II AKa 79/15.

public trust in the courts and ensuring uniform application of the law. The media play a crucial role in this regard, as they act as representatives of public opinion, not only reporting on proceedings but also helping to prevent potential abuses and arbitrary procedural decisions. The court emphasises that the presence of journalists at hearings and the ability to publicly comment on cases of significant public interest constitute an essential mechanism of democratic oversight of the judiciary. Consequently, judicial transparency serves not only the interests of the parties involved but also society as a whole, which has a right to information on the functioning of the justice system. Simultaneously, the court stresses that restricting the openness of proceedings should be exceptional and applied only when it is absolutely necessary to protect the legitimate interests of the participants. In particular, protecting an important private interest can serve as a basis for limiting transparency only when public disclosure of information could cause significant harm to the individuals involved, such as in cases concerning particularly sensitive personal data, family matters, or the dignity of trial participants. Nevertheless, the court emphasises that even in such cases, a balance must be maintained between privacy protection and the public's right to information about the case and the reasoning underlying the judgment. This means that restrictions on transparency should be applied proportionally and only to the extent necessary to safeguard specific legal interests, without violating the fundamental principle of judicial transparency. In practice, this requires that decisions to exclude the public from hearings must be thoroughly justified, and each case should be assessed individually, considering both the rights of the participants and the public interest.³¹

The Court of Appeal in Warsaw focuses on the issue of restricting the transparency of proceedings, emphasising that any decisions in this regard must be made only to the extent that is necessary and proportionate.³² In its rulings, the court emphasises that the exclusion of transparency may apply only to those parts of the oral reasoning of the judgment and the written justification that directly relate to materials classified as confidential. This means that the complete secrecy of the entire proceeding is not permissible if classified information constitutes only part of it. Such an approach aims to ensure maximum transparency of the judicial process, while simultaneously protecting information covered by state secrecy. Further, the court stresses that every state authority, including courts, has an obligation to protect state secrecy; however, this obligation must not lead to excessive restrictions on a party's right to a public hearing of their case. The principle of judicial transparency is a fundamental guarantee of a fair trial, and its restriction should occur only in situations where it is absolutely necessary and justified by the public interest or the

³¹ Dziembowski and Szczechowicz, 2014, p. 55.

³² Decision of the Court of Appeal in Warsaw of 19 December 2013, II AKz 856/13.

protection of legal rights of the participants in the proceedings. In a second ruling, the court unequivocally states that the principle of judicial transparency, as derived from the Constitution, is significant for the Polish legal system. Every decision to limit transparency must have a direct basis in the provisions of the Constitution and the CCP, and any attempts to expand the scope of secrecy through statutory regulations or judicial practice are impermissible. The Court of Appeal in Warsaw further asserts that excluding transparency should be treated as an exception to the rule, and its application must always be strictly justified and limited to the absolute minimum necessary. Any decision to classify parts of a proceeding must always consider both the public interest and the rights of the parties to a fair trial. In practice, this means that even when it is necessary to protect state secrecy, the court should strive to disclose as much of the proceedings as possible, ensuring that society has access to key information about the case and the reasoning underlying the verdict. Emphasising this principle in case law is crucial for judicial practice, as it prevents excessive classification of cases that lack genuine justification in the public interest or the protection of state secrecy. Thus, the court underscores the need to balance the protection of specific legal interests with the fundamental right of a party to a public hearing, thereby strengthening judicial transparency and safeguarding the core principles of a democratic state governed by the rule of law.³³

Analysing appellate court case law clearly indicates that the transparency of criminal proceedings is a fundamental pillar of a fair trial and a key guarantee of the rule of law. Courts consistently emphasise that judicial transparency supports procedural justice, enabling public oversight of the activities of the judiciary and increasing public trust in judicial institutions. The public nature of hearings allows not only for verification of the correctness of judicial decisions but also for the elimination of potential abuses and arbitrary rulings. Consequently, restrictions on transparency may only occur in exceptional situations, justified by a significant legal interest, and each decision in this regard should be preceded by a thorough analysis and meet the proportionality requirement in relation to the objective it aims to achieve. Appellate courts strongly oppose the practice of excessive restrictions on access to case files and the unjustified classification of historical documents, including materials from communist security services, as state secrets. According to the courts, such practices violate fundamental principles of fair proceedings, including the principle of equality of arms, and limit the procedural rights of participants. Courts stress that access to procedural documentation is not only an integral part of the right to defence but also a key factor in ensuring procedural transparency and enabling a comprehensive assessment of the legitimacy of judicial decisions.

33 Żurawik, 2013, pp. 57-69; Orfin, 2012, pp. 71-83.

The primary message from appellate court rulings is the need to uphold the transparency of criminal proceedings as a general principle and limit any restrictions to the absolute minimum necessary. Appellate courts emphasise that any deviations from this rule must be applied with exceptional caution and must always be preceded by a detailed analysis, considering both the protection of state secrets and the right of the parties to a fair trial. Therefore, judicial practice must strike a balance between public interest and the protection of individual rights, ultimately enhancing transparency and efficiency in the justice system while strengthening its legitimacy in the eyes of citizens.

6. Conclusion

Analysing the role of the social factor in Polish criminal proceedings clearly demonstrates that it constitutes a fundamental pillar of the justice system, influencing its transparency, fairness and public acceptance. The openness of court proceedings, as a foundation of a democratic state governed by the rule of law, ensures social oversight and reduces the risk of arbitrary judicial decisions. Simultaneously, citizen participation in the administration of justice, whether through the institution of social representatives or the role of lay judges, serves as a key mechanism for the democratisation of the judiciary. This participation ensures that the judiciary more accurately reflects societal needs and values.

The principle of public criminal proceedings plays a crucial role in shaping public trust in the judiciary, and its implementation contributes to increased transparency and accountability of judicial authorities. The ability of citizens, the media, and social organisations to observe court proceedings ensures that trials are more transparent and fairer, and their outcomes more socially acceptable. The openness of proceedings is not merely a symbolic expression of judicial transparency; rather, it serves as a mechanism that guarantees respect for the rights of the parties and enables public oversight of the judiciary's functioning.

An equally important element of the social dimension of criminal proceedings is the institution of the social representative, which serves as a bridge between society and the justice system. The social representative not only monitors the course of hearings, but may also support one of the parties in the proceedings, particularly victims, defendants or social groups whose rights are at risk. Social organisations, acting as social representatives, frequently engage in cases of particular social significance, monitoring proceedings and identifying potential abuses. This involvement contributes to strengthening mechanisms for human rights protection and enhancing the quality of the justice system.

A key aspect of public participation in the judiciary is the institution of lay judges, who, by representing diverse social backgrounds, enrich the adjudication process with extra-legal experiences and social values. Their presence ensures a broader range of perspectives in judicial proceedings, further aligning court decisions with society's sense of justice. Moreover, the involvement of lay judges helps prevent the judiciary from becoming insular and disconnected from social realities, serving as an important safeguard against the alienation of the judicial system from society. In the context of ongoing discussions on the evolution of lay judges, there is increasing advocacy for reforming their selection process and reconsidering the reintroduction of jury trials, which were part of the Polish legal system during the interwar period. The growing public interest in citizen involvement in the justice system suggests that the legal framework should adapt to new forms of social participation, which would enhance the democratic legitimacy of the judiciary and strengthen its connection with societal expectations.

In summary, the participation of the social factor in Polish criminal proceedings is not only an institutional manifestation of the democratisation of the judiciary, but also a key mechanism ensuring its transparency and fairness. Both the principle of publicity and the institutions of social representatives and lay judges serve a supervisory function, enhancing the credibility of the courts and their accountability to society. Analysing appellate court case law indicates a clear position that the transparency of proceedings and citizen participation in the judicial process are fundamental to a fair trial and should not be restricted without a clear and justified legal interest. Based on the conducted analysis, it can be concluded that the modern justice system requires continuous dialogue between society and the judiciary to ensure that criminal proceedings genuinely reflect the values, expectations and sense of justice of citizens.

Maintaining a balance between judicial independence and public oversight is crucial for the further development of the Polish justice system, and the consistent strengthening of the role of the social factor is an important element in building a democratic state governed by the rule of law.

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