

Summary

The subject of the PhD thesis is the institution of proceedings to the necessary extent (Pol. *postępowanie w niezbędnym zakresie*).

This is a crucial measure for tackling crime, allowing immediate response and carrying out the necessary procedural steps to secure traces (Pol. *ślady*) and evidence (Pol. *dowody*) of a crime. Immediately upon receiving notification of a crime, the authority appointed to conduct pre-trial proceedings is obliged to issue a decision to either initiate or refuse to initiate an investigation (arg. ex Article 305 § 1 of the Code of Criminal Procedure). However, it is not always possible to immediately issue a decision to formally initiate an investigation (Pol. *śledztwo*) or inquiry (Pol. *dochodzenie*). Hence, the Code of Criminal Procedure stipulates that even before issuing a decision to initiate an investigation or inquiry, the prosecutor or the Police may, in any case, within the limits necessary to protect traces and evidence of a crime from loss (also disfigurement or destruction), in cases of urgency, carry out procedural actions to the necessary extent.

This includes, in particular, carrying out an inspection (with the participation of an expert, if necessary), a search or the actions listed in Article 74 § 2 p. 1 of the Code of Criminal Procedure with respect to the suspect, and take other necessary actions with respect to the suspect, not excluding the collection of blood and bodily secretions (arg. ex Article 308 § 1 *in principio* of the Code of Criminal Procedure). After carrying out these actions, in cases where the prosecutor's investigation is mandatory, the investigator shall transfer the case to the prosecutor (arg. ex art. 308 § 1 *in fine* of the Code of Criminal Procedure). The carrying out of the actions mentioned in the above-mentioned provision, if the prerequisites indicated therein occur, constitutes the actual initiation of pre-trial proceedings, which, in essence, are proceedings to the necessary extent.

The institution regulated by Article 308 § 1 of the Code of Criminal Procedure fulfills an important role in the criminal process. Despite this, it has not been monographically elaborated so far. There are studies that are only of a contributory nature, but do not present its issues as a whole. Therefore, the above considerations decided to take up the issue of the procedure to the necessary extent in order to discuss it comprehensively.

Said PhD dissertation consists of an introduction, eight chapters and final conclusions.

In the initial part of the thesis, due to the functioning of many names for the activities specified in Article 308 of the Code of Criminal Procedure, (e.g., inquiry to the necessary extent, preliminary inquiry, urgent activities) the name "proceedings to the necessary extent" is discussed and explained in detail. The presentation and characterization of such emerging, in the context of discussing the institution of proceedings to the necessary extent, terms such as urgent actions, procedural actions to the necessary extent, protective inquiry, actions to secure traces and evidence, or unique actions, was intended to organize the review of the literature in this regard. It also led unequivocally to the conclusion that the institution regulated by Article 308 of the Code of Criminal Procedure constitutes proceedings to the necessary extent, and will be used in this sense in the course of further considerations. In the course of these considerations, an unequivocal conclusion was reached that it is appropriate to use the expression "proceedings to the necessary extent", because all other terminological terms, although correct, do not reflect the entire complexity of this institution. This is because these activities are carried out for a specific purpose, while their scope is defined in terms of objects, subjects and time. Article 308 of the Code of Criminal Procedure defines the temporal framework of the procedural activities of authorized bodies and participants, as well as the scope of their powers and duties. In the following chapters, the essence and purpose of the necessary proceedings are discussed, and the place of the necessary proceedings in the model of pre-trial proceedings is presented.

Subsequently, in the third chapter, which has a comparative legal character, the formal-dogmatic (textual) method was used. It presents proceedings to the necessary extent in selected foreign criminal procedural legislation. The content of the provisions of the procedure in the necessary scope occurring in foreign, exemplarily selected, legislation: German, Spanish, French and Italian was analyzed.

The dissertation also refers to the origins - the prototypes of proceedings to the necessary extent regulated in the Criminal Procedure Codes of 1928 and 1969. The evolution of the procedure in the necessary scope in the criminal process up to the current legislation was presented. Particular attention was paid to and a thorough discussion of the conditions for admissibility of proceedings to the necessary extent, that is, the prerequisites for proceedings to

the necessary extent - both general and specific.

Then, the course of proceedings within the necessary scope was discussed, i.e. the procedural actions carried out in the course of the proceedings, such as: inspection of the place, person, things, corpse, search, detention, actions taken against the suspect (among others, presentation, confrontation), or the most far-reaching of the actions possible under proceedings within the necessary scope, i.e. interrogation of a person suspected of a crime as a suspect before issuing a decision on the presentation of charges. In addition, author presented the method of documenting procedural actions in proceedings within the necessary scope, as well as its temporal scope. The issue of participation of the parties in the proceedings to the necessary extent was also presented.

A separate chapter considers the authorities authorized to conduct proceedings to the necessary extent. It focuses on the identification and characteristics of these bodies, as well as the scope of their authority to perform actions in the proceedings to the necessary extent. Indeed, according to the wording of Article 308 of the Code of Criminal Procedure, the prosecutor or the Police may carry out procedural actions to the necessary extent in any case. And according to Article 312 p. 1 of the Code of Criminal Procedure, the powers of the Police are also vested in: the authorities of the Border Guard, the Internal Security Agency, the Customs Service, the Central Anti-Corruption Bureau, within the scope of their jurisdiction, as well as other authorities provided for in special regulations (Article 312 p. 2 of the Code of Criminal Procedure - the Hunting Guard, the Forest Guard or the Environmental Protection Inspectorate). In addition, in cases in which a financial pre-trial body is authorized to conduct such proceedings and then to bring and support an indictment before the court, the word "prosecutor" in Article 308 §1 of the Code of Criminal Procedure is also understood to mean "financial pre-trial authority" (Article 122 §1 p. 1 of the Fiscal Penal Code).

The last chapter addresses the possible forms of termination of proceedings to the necessary extent, i.e. situations when the activities in the proceedings to the necessary extent have been carried out (in fact, pre-trial proceedings have been initiated) and, depending on the evaluation of the materials collected in the proceedings to the necessary extent, a decision has been made:

- initiation of an inquiry,
- transferring the materials collected in the course of the investigation to the necessary extent with a request to initiate an investigation,
- discontinue the proceedings if there are negative procedural grounds for discontinuing the proceedings to the necessary extent listed in Article 17 §1 of the Code of Criminal Procedure, (e.g., lack of the elements of a crime, lack of sufficient data to justify the commission of a criminal act, not being subject to punishment, statute of limitations on criminality, death of a suspect),
- discontinuing the inquiry due to failure to detect the perpetrator, thus discontinuing the case and entering the case in the crime register,
- transfer of the inquiry to other authorities.

A refusal to initiate pre-trial proceedings is excluded, as they were actually initiated under Article 308 of the Code of Criminal Procedure.

The doctoral dissertation under discussion finishes with conclusions resulting from the considerations made. Among the most important are the following:

1. Proceedings to the necessary extent fulfill a crucial role in the criminal process, since:

- constitutes a stage of pre-trial proceedings, during which part of the preliminary investigation is carried out, and thus fulfills its objectives under Article 297 § 1 of the Code of Criminal Procedure,
- actions performed in the proceedings to the necessary extent under Article 308 of the Code of Criminal Procedure have the value of procedural actions, full evidentiary force, recorded by means of protocols therefore. The evidence recorded during the proceedings to the necessary extent, can be used at the main hearing and form the basis for establishing the facts of the case,
- due to the fact that the proceedings to the necessary extent are part of the criminal process, there are procedural parties, who have the right to participate in the various activities of these proceedings, to initiate these proceedings by submitting requests for evidence, and to challenge procedural decisions. Naturally, the rights of the parties are limited compared to those of parties in proceedings initiated on the basis of a formal decision to initiate an investigation or inquiry.

2. Proceedings to the necessary extent applies when immediate action by law enforcement is

required, as the conditions for the initiation of pre-trial proceedings are present. However, due to the risk of loss (also disfigurement or destruction) of traces or evidence of a crime, it is necessary to take immediate procedural actions without waiting for the formal issuance of a decision to initiate pre-trial proceedings. Waiting to take procedural actions would entail the creation of a delay, which could result in irreversible negative consequences for the collection of traces and evidence of a crime, and as a result, the criminal trial would not be able to achieve its goal - the issuance of a decision on its subject matter.

3. Evidentiary actions carried out under Article 308 of the Code of Criminal Procedure can be undertaken in any case of a crime prosecuted *ex officio*, even if the authority is not locally or substantively competent to conduct these pre-trial proceedings. The distinctive feature of the institution under discussion is that it can be used in any proceeding for a crime, so in both investigations and inquiries. Proceedings to the necessary extent are not determined by the type of crime to which the notification relates. The law broadly covers the subject matter of cases in which Article 308 of the Code of Criminal Procedure is applicable. In the proceedings to the necessary extent, there is a blurring of the subject and object criteria for distinguishing investigation and inquiry. However, such deviations from the rule are mitigated by the short period for the performance of urgent actions and the obligation to immediately transfer the case to the prosecutor after these actions (where investigation is mandatory).

4. The performance of certain actions by law enforcement agencies even before the initiation of proceedings, is permissible when:

- there is a reasonable suspicion that a crime has been committed,
- it is necessary to secure traces and evidence of the crime from loss, disfigurement or destruction,
- there is an objective fear of their loss or deformation if appropriate action is not taken immediately,
- there is an emergency (Pol. *wypadek niecierpiący zwłoki*).

The permissibility of carrying out the activities of the investigation to the necessary extent is limited only to cases of urgency, i.e. situations in which only taking immediate action will make it possible to protect traces and evidence of a crime from loss, disfigurement or destruction. In

addition, there must be data justifying the suspicion that a crime has been committed, and no negative prerequisites for criminal proceedings are unknown to the law enforcement agency. The scope and type of permissible activities is determined by the circumstances of the specific case, and going beyond the scope of activities necessary to secure evidence is an abuse. In view of the above, it is impermissible to undertake and carry out evidentiary activities when there is no "emergency" and when these activities do not consist of the need to secure traces of a crime from loss, disfigurement or destruction.

5. It is necessary that there be no legal impediments to prosecution, except as indicated in Article 17 § 2 of the Code of Criminal Procedure, i.e. when, until the receipt of an application or authorization from the authority on which the law makes prosecution conditional, the procedural authorities will perform only emergency actions to secure traces and evidence, as well as actions aimed at clarifying whether an application will be filed or authorization will be obtained by the prosecutor. Thus, the actions described above can be taken despite the absence of a request for prosecution.

The literature indicates that such actions can be taken in a situation where the law enforcement agency is unable to obtain a statement from the authorized person whether or not such a request will be made and, at the same time, there is a need to secure traces and evidence from loss, (also disfigurement or destruction) in a situation of urgency.

6. It should be noted that the conduct of evidentiary actions within the subject limits of the proceedings to the necessary extent legitimizes the actions of law enforcement agencies as conducted in accordance with the law, and within the limits of the criminal process. The actions in the proceedings within the necessary scope are carried out before the formal initiation of pre-trial proceedings - which is an exception to the rule, i.e., that evidentiary actions are carried out in a criminal trial. Hence, acting within the limits of the proceedings in question to the necessary extent assures law enforcement agencies that the evidentiary actions carried out are in accordance with the law.

7. The purpose of proceedings to the necessary extent is to carry out the necessary activities aimed at securing traces and evidence, which are essential for making a correct procedural decision aimed at clarifying the circumstances of the occurrence, as well as detecting the

offender. Thus, the procedure to the necessary extent is to ensure the correct implementation of the purpose of criminal proceedings, i.e. to detect the perpetrator of the crime and bring him to criminal responsibility. It is applicable in situations where immediate law enforcement action is required and the conditions for the initiation of pre-trial proceedings are present, but due to the risk of loss (disfigurement or destruction) of traces or evidence of the crime, it is necessary to take immediate procedural actions without waiting for the official issuance of a decision to initiate proceedings. Activities carried out in this mode have the quality of "temporariness".

8. The grounds for the actual initiation of a trial are identical to the grounds for the formal initiation of proceedings. The difference is that, in addition to the moment of factual nature (justifying the initiation of procedural actions), there is an objective factor that obliges the law enforcement agency to act immediately (take specific procedural actions without considering that this was not preceded by a formal act). The actual initiation of proceedings in the case of the occurrence of the prerequisites listed in Article 308 of the Code of Criminal Procedure is an obligation, not a right, of the law enforcement agency.

9. On the basis of Article 308 of the Code of Criminal Procedure, one can clearly distinguish between the actual initiation of proceedings and the actual initiation of prosecution. At the same time, the actual initiation of prosecution means all procedural actions directed against a specific person. Paragraph 2 of Article 308 of the Code of Criminal Procedure specifies the conditions for carrying out the actions specified in paragraph 1. Thus - in cases of urgency, i.e., when it could cause the obliteration of traces or evidence of a crime, a person suspected of a crime may be questioned as a suspect in the course of the actions listed in paragraph 1 before the issuance of a decision on the presentation of charges. Naturally, where the conditions for such a decision exist.

10. The evidentiary activities undertaken in the proceedings to the necessary extent are actually a reflection of the first reaction of law enforcement procedural authorities in a situation where they have a reasonable suspicion that a crime has been committed.

11. The provision of Article 308 of the Code of Criminal Procedure is special, so it is not subject to broad interpretation, so when applying it, it is necessary to strictly adhere to the requirements and limitations set forth therein.