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The Recording of a Suspect's Interrogation Using Audio or Video Devices: Postulates De Lege Ferenda and De Lege Lata

Utrwalenie przebiegu przesłuchania podejrzanego za pomocą urządzenia rejestrującego obraz lub dźwięk. Uwagi de lege lata i de lege ferenda

ABSTRACT

The current model of criminal proceedings assumes optional recording of images and sounds from recorded activities, including the suspect's interrogation. Audiovisual recording of this type of procedural activity is rare in practice, which, considering the level of technological development, should force deeper reflection. Interrogation reports do not constitute a faithful representation of activities of particular importance for achieving the objectives of criminal proceedings. They also do not reflect the suspect's full statement, the context in which his words are spoken, and the elements that make up the so-called non-verbal communication. The changes proposed in this article assume mandatory recording of all suspect interrogations, which is intended to meet high standards of a fair criminal trial and protect the accused from torture and inhuman or degrading treatment.

Keywords: images and sound recording from interrogation; suspect; torture

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INTRODUCTION

Under the current legal status, the issue of recording images and sound from procedural activities is regulated by Article 147 of the Criminal Procedure Code[1] and implementing provisions in the form of the Regulation of the Minister of Justice of 11 January 2017 on recording images or sound for procedural purposes in criminal proceedings.[2] The CPC differentiates the circumstances on which the recording of images and sounds depends, distinguishing obligatory cases, relatively obligatory and optional. The first group concerns procedural arrangements in which recording is always necessary, regardless of the procedural decision of the body. The second assumes the obligation to record procedural activities, but also indicates the circumstances that allow for waiving recording. The third makes recording dependent on the discretion of the activity's procedural body.

The following activities are absolutely obligatory:

- questioning the injured party or witness in special procedures (Articles 185a–185c and Article 185e CPC), as evidenced by Article 147 § 2a CPC;
- examination of a witness or expert when there is a risk that the examination of this person will not be possible in further proceedings or the examination is carried out in the manner specified in Article 396 CPC, as indicated in Article 147 § 2 (1) and (2) CPC.

It is emphasized in the case law that failure to comply with the requirement to record images and sound from procedural activities specified in Article 147 § 2 (1) and (2) CPC does not entail any sanction.[3] The main activity remains effective. However, the parties may indicate in an ordinary appeal that this failure affected the content of the final decision on criminal liability.

Registration of the main and appeal hearings is relatively mandatory. Under Article 147 § 2b CPC, the course of the hearing shall be recorded using a sound or images and sound recording device unless it is technically impossible. However, this obligation is not absolute because its performance may be impossible due to technical limitations.[4] It is worth mentioning, however, that the course of the hearing, in the scope in which its publicity has been excluded due to the fear of disclosing classified information with a "secret" or "top secret" classification, shall not be recorded if it is not possible to ensure proper protection of the sound or images and sound recording against unauthorized disclosure (Article 147 § 2c CPC).

[1] Act of 6 June 1997 – Criminal Procedure Code (consolidated text, Journal of Laws 2025, item 46, as amended), hereinafter: CPC.

[2] Journal of Laws 2017, item 93.

[3] Judgment of the Court of Appeal in Wrocław of 26 October 2017, II AKa 289/17, LEX no. 2415313.

[4] Judgment of the Supreme Court of 14 April 2022, I KZ 26/22, LEX no. 3430636.

On the other hand, recording the course of recorded activities other than those indicated above is optional (Article 147 § 1 CPC). Recorded activities include, in particular, receiving an oral notification of the crime, a motion to prosecute and its withdrawal; questioning the accused, witness, expert and probation officer; conducting an inspection; opening the body and removing the body from the grave; conducting an experiment, confrontation and identification; searching the person, place, things and the IT system and seizing things and IT data; opening correspondence and shipments and reproducing the recorded records; familiarising the suspect with the materials collected during the preparatory proceedings; accepting bail. In such a procedural arrangement, the persons participating in the activity should be warned about it before the device is started. This means that the decision to record the images or sound is at the discretion of the procedural body. Failure to complete this activity cannot result in the formulation of an effective appeal objection.[5]

Currently, recording the images and sound from the performance of a procedural activity is a so-called auxiliary form of recording its course, which means that it cannot replace the protocol as the basic form of mapping the participants' behaviour in the proceedings.[6] By Article 147 § 3a CPC, the images or sound recording becomes an annex to the protocol. If the interrogation report is limited to the most important statements of the people participating in the action, a translation of the audio recording is made, which also becomes an annex to the interrogation report. This is a so-called simplified protocol, the purpose of which is to deformalize and speed up the criminal proceedings.[7]

The party, defence attorney, attorney and statutory representative can receive one copy of the images or audio recording for a fee. This does not apply to the course of the hearing or other actions on camera or in preparatory proceedings. For important reasons justified by the protection of the private interests of persons participating in the hearing, the president of the court may not consent to the preparation of a copy of the images recording from the hearing for the parties, defence attorneys, attorneys and statutory representatives (Article 147 § 4 CPC).

[5] Judgment of the Court of Appeal in Warsaw of 5 May 2016, II AKa 285/15, LEX no. 2166527.

[6] D. Tarnowska, *Utrwalanie przebiegu czynności protokołowanych za pomocą urządzenia rejestrującego obraz lub dźwięk (art. 147 k.p.k.)*, "Ius Novum" 2011, no. 4, p. 28; A. Sakowicz, *Odmowa składania zeznań. Glosa do uchwały SN z dnia 26 października 2006 r., I KZP 22/06*, "Gdańskie Studia Prawnicze – Przegląd Orzecznictwa" 2008, no. 1, p. 111; judgment of the Court of Appeal in Lublin of 11 May 2004, II AKa 101/04, "Prokuratura i Prawo" (insert) 2005, no. 1, item 23.

[7] T. Grzegorczyk, *Protokół uproszczony jako nowy sposób utrwalenia czynności procesowych w znowelizowanym postępowaniu karnym i w sprawach o wykroczenia*, "Prokuratura i Prawo" 2003, no. 11, p. 27.

IMPERFECTION OF PROTOCOLAR RECORDING OF INTERVIEWING ACTIVITIES

Recording images and sounds during procedural activities in criminal proceedings is the legislator's way of addressing the limitations of traditional written records.[8] The protocol should include, among other things, a description of the course of the activity and the statements and conclusions of its participants and, if necessary, a statement of other circumstances concerning the course of the activity, as evidenced by the content of Article 148 § 1 (2) and (4) CPC. A concise, simple form usually characterizes the protocol. It is rare for interrogators to write down elements of the so-called non-verbal communication, e.g. a sudden change in the suspect's emotional state (crying, outburst of anger, sadness) or physiological symptoms (excessive sweating, trembling limbs, nervous tics). Meanwhile, such reactions can provide the procedural authorities with important information regarding the account's authenticity, spontaneity, or potential attempts at manipulation by the suspect.

The interrogation report does not constitute an exact representation of the course of the hearing.[9] J. Gurgul correctly emphasizes that if the interrogation report could and did constitute a mirror image of a given procedural act, then the *ratio legis* of Article 147 § 1 CPC would be eliminated.[10] It is an intellectually processed record of the act prepared by the procedural body. In practice, recording the hearing carries the risk that the document will not be a faithful reflection of the statement of the person being heard, but only a subjective interpretation of the words made by the person hearing the statement. By paraphrasing the statements, the procedural body may unconsciously distort their meaning. As a result, a document prepared in this way does not fully reflect the content of the statements articulated or the dynamics of the statement (e.g. voice modulation, style of speech, uncertainty of the person being heard). It does not reflect the context in which the words were said (e.g. the promise by the prosecutor not to file a motion for the application of temporary arrest in exchange for admitting guilt).

According to Article 148 § 2 CPC. Explanations, testimonies, statements and conclusions, and statements of specific circumstances by the body conducting the proceedings are included in the interrogation report with the greatest possible accuracy. Persons participating in the activity have the right to request that everything that concerns their rights or interests be included in the interrogation report with full accuracy. The provision of Article 150 CPC provides a mechanism for verifying the

[8] Judgment of the Supreme Court of 1 July 2020, V KK 496/18, LEX no. 3153476.

[9] Judgment of the Court of Appeal in Lublin of 22 October 2003, II AKa 115/03, "Prokuratura i Prawo" (insert) 2004, no. 10, item 30.

[10] J. Gurgul, *Glosa do wyroku Sądu Apelacyjnego z dnia 22 października 2003 r., II AKa 115/03*, "Palestra" 2006, no. 1–2, p. 245.

content of the interrogation report in terms of compliance with the actual course of the activity. Except for the interrogation report of a hearing or session, the person participating in the activity signs the interrogation report. Before signing, it should be read out, and a note should be made about it (Article 150 § 1 CPC). In addition, a person participating in the activity may, when signing the interrogation report, simultaneously submit objections to its content; these objections should be included in the interrogation report together with the statement of the person performing the recorded activity (Article 150 § 2 CPC). Reading the interrogation report before signing and the possibility of raising objections to its content is intended to ensure that they reflect the procedural reality. These rights are not always effectively used by the interested parties. This often results from the lack of or incorrect instruction about such an opportunity or simply a lack of understanding.

In practice, people being questioned, under stress, sign the protocol without thoroughly reading its content. In such a case, a kind of "legalization" of the record occurs, which does not fully reflect the actual course of the action. This may, in turn, affect the later assessment of evidence by the court ruling on the criminal liability of the accused. The assessment of evidence is always secondary to the performance of the recorded action. There is, therefore, a strong relationship between the result of such an assessment and the quality of the recording of the procedural action. The more reliable the protocol, the lower the probability of the court making an incorrect assessment of evidence at a later stage of the proceedings.

NECESSITY TO PROTECT THE PROCESS GUARANTEES OF THE SUSPECT

To ensure the suspect's procedural rights are fully protected, it would be essential to make video and audio recording mandatory for key procedural activities, especially during interrogations. The above requirement met the high standards of a fair criminal trial guaranteed by the European Convention on Human Rights and Fundamental Freedoms.[11]

Therefore, not only be a complete reversal of the current wording of Article 147 § 1 CPC but also a kind of simplification of the provision because §§ 2a and 2b of Article 147 CPC could be repealed as unnecessary. The necessity to achieve the principle of material truth, the primacy of which, among other fundamental rules, is unquestionable, speaks in favour of the mandatory registration of recorded activities.[12]

[11] See E. Lis, *The Impact of International Law on International Criminal Proceedings – Human Rights Perspective*, "Studia Iuridica Lublinensia" 2024, vol. 33(5), pp. 201–202.

[12] D. Karczewska, *Zasada prawdy materialnej po nowelizacji k.p.k. na tle innych zasad prawa karnego procesowego*, "Studia Iuridica Lublinensia" 2016, vol. 25(1), p. 232.

The possibility of familiarizing oneself with the procedural statements of the person being questioned (the suspect's explanations) at each stage of the proceedings allows for a more complete and objective assessment of these statements. It also allows the participants of the proceedings (including the procedural bodies) to better prepare for a re-questioning at a later stage, enabling a thorough analysis of previous statements, identifying contradictions, and formulating more relevant and precise questions. Recording activities in this respect would satisfy the principle of immediacy.[13] It facilitates "tangible" familiarization with evidence during criminal proceedings and at "any request" of the procedural body.

Recording the interrogation activity may also be of fundamental importance from the point of view of issuing a forensic psychiatric or psychological opinion on the suspect. Such material is a valuable source of information about the mental state of the person being interrogated and their ability to perceive and recreate observations. Analysis of recordings of the procedural accounts of the person being interrogated at various stages of the proceedings allows experts to assess the so-called "psychological credibility" of such a person and their tendency to fantasize and confabulate. The fact that the accused has the right to provide false explanations, exercising their fundamental right to defence, does not mean that this lie cannot be unmasked using the special knowledge possessed by the experts.

The recording of images and sound is also helpful for the court of appeal, which receives an additional tool for verifying the objections raised by the parties and their legal representatives in the appeals they prepare.[14] Although the current model of appeal proceedings allows for conducting evidence proceedings in a broad scope, practice shows that usually, the court *ad quem* verifies the assessment of evidence conducted by the court *a quo*, primarily based on the evidence already collected. Any evidence taken is supplementary and is dictated by the need to maintain proper instance control of the decision.

IMPROVING THE PROFESSIONAL QUALIFICATIONS OF PERSONS INTERVIEWING

Recording the images and sound of the interview has a positive effect on the quality of the procedural activity conducted. The interview dynamic forces the person conducting the activity to pay more attention, be thorough and have better

[13] J. Kosonoga, *Glosa do uchwały SN z dnia 30 listopada 2004 r., I KZP 25/04*, "Prokuratura i Prawo" 2005, no. 6, pp. 111–112.

[14] Judgment of the Supreme Court of 1 July 2020, V KK 496/18, LEX no. 3153476; judgment of the Court of Appeal in Kraków of 2 July 2015, II AKa 108/15; judgment of the Supreme Court of 19 July 1975, V KR 84/75, OSNKW 1976, no. 2, item 29.

substantive preparation, including a thorough knowledge of the evidence collected and the facts arising from it. The awareness that the activity is being recorded prevents asking irrelevant questions and those that could suggest an answer. Such questions are inadmissible in Polish criminal procedure, as evidenced by the normative content of Article 171 §§ 4 and 6 CPC. This certainly significantly affects the implementation of the principle of objectivity, as each question of the interviewer and the answer of the person being interviewed are recorded, which reduces the risk of potential manipulation or abuse of the procedural position. Recording the images and sound of the interview would make it more effective. Instead of taking notes, the interviewer would focus on the activity conducted each time. Therefore, there would be no need to frequently pause the course of action to note what is being said. Such interruptions harm the spontaneity of the statement and negatively affect the ability to perceive and reproduce observations, making it difficult to determine the factual situation in the case being conducted correctly.

Audiovisual recording of interrogations is also of great training importance for both officers and trainees who are just learning in police schools. It allows for improving interrogation tactics and techniques to improve officers' qualifications. Better-trained interrogators also mean a greater chance of conducting procedural activities quickly and reliably. It is worth emphasizing that the provisions of the CPC only set the general framework for interrogations. According to Article 171 § 1 CPC, the person being interrogated should be allowed to speak freely within the limits specified by the purpose of the given activity, and only then may questions be asked to supplement, clarify or verify the statement. The following phases can be derived from this provision: free speech, supplementary and controlling questions, verification and confrontation, and final. The doctrine emphasizes that detailed issues related to the interview are the subject of interest of representatives of forensics as an interdisciplinary field of science and not of the criminal process itself.[15] Nevertheless, forensics plays a subservient function to the criminal process and is intended to provide tools for achieving its goals.

EXISTENCE OF READY-MADE TECHNOLOGICAL TOOLS

The introduction of mandatory recording of recorded activities via both images and sound would not entail additional costs for the justice system. A general legal framework is already in force by implementing provisions to Article 147 § 5 CPC, which would not require the implementation of additional regulations. These standards specify the types of devices and technical means used to record

[15] E. Gruza, [in:] E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka, czyli o współczesnych metodach dowodzenia przestępstw*, Warszawa 2020, p. 25.

images or sound for procedural purposes; the method of storing, reproducing and copying images or sound recordings; the method and procedure for making images or sound recordings available to parties, defence attorneys, attorneys and statutory representatives; the method and procedure for providing parties, defence attorneys, attorneys and statutory representatives with copies of images or sound recordings; the amount of the fee for making and transmitting a copy of images or sound recording and setting up accounts in the IT system to transmit copies of images or sound recordings. Moreover, these regulations indicate that the IT system ensures, among other things, the integrity of the recording, its protection against loss, distortion, unauthorized access, deletion or other unauthorized changes, and the recognition of each introduced change.

With today's advanced IT technologies, making audiovisual recording mandatory in criminal proceedings – especially during suspect interrogations – is entirely feasible. The continuous improvement of recording equipment and software ensures high-quality footage, while IT systems provide safeguards against unauthorized tampering. In turn, IT systems protect against unauthorized interference in third-party recording. The currently applicable regulations provide a real chance to introduce mandatory recording of interrogations without incurring major financial outlays. Mandatory recording of images and sounds is, therefore, a natural step towards modernizing the criminal procedure, which is "outdated" in the use of technology.

RECORDING INTERVIEWS IN SELECTED EUROPEAN COUNTRIES

Another argument favouring mandatory recording of suspects' interviews in Poland is that this solution has existed in many European countries for years. For example, in the Federal Republic of Germany, England, Wales, and France, recording images and sounds from suspects' interviews is relatively mandatory, which is intended to protect the suspect's basic procedural guarantees and thus make the criminal trial fairer.

The German Criminal Procedure Code (StPO – Strafprozeßordnung)[16] provides for mandatory recording of suspects' interviews in video and audio recordings in two procedural systems. Firstly, when the proceedings concern the intentional deprivation of the life of a person if there are no objective obstacles to this or there is a need to interrogate the suspect immediately. Secondly, when the interests of a suspect who has a noticeably reduced mental capacity or a serious mental disorder can be better protected by recording (§ 136 (4) StPo *in fine*). In other cases, questioning is optional (§ 136 (4) StPo *in principio*).

[16] Available in English at https://www.gesetze-im-internet.de/englisch_stpo (access: 20.2.2025).

In England and Wales, the Police and Criminal Evidence Act 1984 (PACE) is in force, which introduces an obligation to record audio or audio and video from questioning. Detailed requirements for the procedure in this area, audio and video equipment, and the storage of recordings are regulated by two PACE codes of practice, E and F. Code E applies to audio recordings of questioning activities. Code F, on the other hand, covers audio and video recordings of such procedural activities.[17] These regulations emphasize the need to record the entire questioning, not just a part. The recording of a procedural activity may be waived only in the event of technical problems with the audio and video equipment or when the activity would occur outside the police station, and the activity would not suffer any delay.

The French Criminal Procedure Code (Code de procédure pénale) also provides for mandatory recording of images and sounds of the suspect's interrogation. According to Article 64-1 of the Act, interrogations in cases of crimes must be recorded. The provision provides two procedural arrangements in which recording may not be conducted. Firstly, when the case is multi-person (there are multiple suspects), in such a case, the prosecutor may omit individual interrogation recording for procedural economic reasons. Secondly, it is possible to waive the interrogation when important technical issues oppose it. In the latter situation, this circumstance must be noted in the interrogation transcript. The recording does not constitute an annex to the transcript and, as a rule, is not available to the parties to the proceedings. It can only be played in a situation where there is a need to verify the consistency of the transcript with the actual course of the interrogation. The recording is destroyed by operation of law after 5 years from the expiry of the limitation period for the crime.[18]

The common element of all the indicated regulations is the obligation to protect suspects' rights and guarantee the fairness of criminal proceedings, especially at their initial stage. Mandatory recording of images and sounds is justified by the gravity of the alleged act and the suspect's specific characteristics and personal conditions (intellectual deficits, reduced mental capacity, young or old age).

[17] Code E Revised – Code of Practice on audio recording interviews with suspects, and Code F Revised – Code of Practice on visual recording with sound of interviews with suspects, available at https://assets.publishing.service.gov.uk/media/5f1e7e24d3bf7f5968d37de1/pace-codes-e-and-f-2018.pdf (access: 20.2.2025); Police and Criminal Evidence Act 1984, available at https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice?utm_source=chatgpt.com (access: 20.2.2025).

[18] Available in French at https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006151876/?anchor=LEGIARTI000025713150#LEGIARTI000025713150 (access: 20.2.2025).

PROTECTION AGAINST INHUMAN OR DEGRADING TREATMENT OF SUSPECTS

Recording interrogation activities protects the suspect from inhuman or degrading treatment by the interrogator. According to Article 40 first sentence of the Polish Constitution,[19] no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. According to Article 3 ECHR,[20] no one may be subjected to torture or inhuman or degrading treatment or punishment. This norm is absolute, which means that the ECHR does not provide for any exceptions to it.[21] It is, therefore, *ex proprio vigore* in nature.[22]

The European Court of Human Rights (ECtHR) has repeatedly considered cases concerning inhuman treatment and torture, including situations in which police officers or other services used prohibited interrogation methods against suspects. The ECtHR emphasises that obtaining procedural statements by law enforcement authorities in this way automatically makes the entire trial unfair, regardless of their evidentiary value. It is, therefore, irrelevant whether such statements were the only incriminating evidence or one of many pieces of evidence of the accused's guilt in a criminal trial.[23] Seeking to convict the perpetrator cannot justify violating the absolute prohibition of unlawful treatment set out in Article 3 ECHR. Allowing such practices would legitimise unworthy, unethical behaviour aimed at achieving the material truth at the so-called "any cost" at the expense of the suspect's basic procedural guarantees.[24] In other words, finding that Article 3 ECHR has been violated leads to an automatic finding that the entire trial of the defendant was unfair. For example, in the case of *Okkali v. Turkey*, the ECtHR emphasised that

[19] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 27.12.2025).

[20] Convention for the Protection of Human Rights and Fundamental Freedoms, done in Rome on 4 November, as amended by Protocols No. 3, 5 and 8 and No. 14 and supplemented by Protocol No. 2 (Journal of Laws 1993, no. 61, item 284, as amended).

[21] Judgment of the ECtHR of 28 September 2015 in case 23380/09, *Bouyid v. Belgium*, LEX no. 1797891; judgment of the ECtHR of 16 October 2012 in case 49747/11, *Ergashev v. Russia*, LEX no. 1219728.

[22] A. Wyrozumska, *Kilka uwag na trzydziestolecie obowiązywania konwencji o ochronie praw człowieka w Polsce*, "Europejski Przegląd Sądowy" 2023, no. 11, p. 23.

[23] W. Jasiński, *Karnoprocesowa dopuszczalność dowodów uzyskanych w wyniku tortur (standardy strasburskie)*, "Państwo i Prawo" 2011, no. 5, p. 51.

[24] Judgment of the ECtHR (WI) of 1 June 2010 in case 22978/05, *Gäfgen v. Germany*, LEX no. 578361; judgment of the ECtHR (WI) of 11 July 2006 in case 54810/00, *Jalloh v. Germany*, LEX no. 187260; judgment of the ECtHR (WI) of 28 July 1999 in case 25803/94, *Selmouni v. France*, LEX no. 76966.

statements extracted through inhuman treatment or torture are not credible evidence and constitute a flagrant violation of the principle of a fair criminal trial.[25]

According to the Commissioner for Human Rights, in the period 2008–2015, Polish courts issued convictions against 33 police officers in 22 criminal proceedings for acts classified under Article 246 of the Criminal Code, which partially met the definition of torture resulting from the ECHR.[26] The above shows that the use of torture and other cruel, inhuman or degrading treatment in Polish circumstances is not hypothetical but real. It would be worth considering recording the images and sound of every action performed on a suspect. As the Commissioner for Human Rights analyses show, abuses by officers and identified cases of torture of detained persons occurred most often before formal questioning as suspects, during the so-called interrogation. Such situations occurred both in police units and outside, e.g. in official cars during escort to procedural activities. As the Commissioner points out, torture sometimes occurs repeatedly over a short period.

The so-called Méndez rules, developed by the former UN Special Rapporteur on Torture and Director of the Division of the Initiative Against Torture at the American University School of Law in Washington, have recently enjoyed popularity.[27] Analysis of the rules indicates that audiovisual recording of interrogations allows for more reliable documentation of interrogation activities, which benefits both the interrogators and the interrogated. The recording also protects officers from allegations of inhumane treatment of interrogated persons. Such allegations by suspects force the justice system to act on two levels. First, in jurisdictional proceedings, the court will usually question the officers participating in the activity to verify their testimony regarding the allegations raised by the suspect. Therefore, evidence is created regarding issues not directly related to the mainstream of criminal proceedings (the criminal liability of the accused) but to compliance with the requirements of interrogation and officers' ethics. In reality, it is difficult to assume that an officer who committed abuse against the suspect will admit to this fact when being questioned as a witness. Secondly, such claims should be assessed in separate proceedings from the perspective of the possible realisation of the features of the prohibited act by the officer.

[25] Judgment of the ECtHR of 17 October 2006 in case 52067/99, *Okkali v. Turkey*, LEX no. 599272.

[26] Rzecznik Praw Obywatelskich, Pismo do Ministra Sprawiedliwości w sprawie podjęcie inicjatywy legislacyjnej, która zagwarantuje każdej osobie zatrzymanej przez Policję lub inne służby uprawnione do zatrzymania kontakt z obrońcą od początku zatrzymania, 18.4.2017, https://bip.brpo.gov.pl/sites/default/files/Wystapienie%20generalne%20-%20obronca%20od%20poczatku%20zatrzymania.pdf (access: 20.2.2025).

[27] Ministerstwo Sprawiedliwości, *Ministerstwo Sprawiedliwości upowszechnia standardy praw człowieka*, 27.12.2024, https://www.gov.pl/web/sprawiedliwosc/ministerstwo-sprawiedliwosci-upowszechnia-standardy-praw-czlowieka (access: 20.2.2025).

From the perspective of the prosecutor's office, police officers or other services indicated in Article 312 CPC, audio and video recordings constitute confirmation that the interrogation was conducted by applicable legal provisions and in compliance with the principles of professional ethics and deontology. This allows for avoiding the initiation of time-consuming preparatory proceedings and speeds up the possible conduct of verification proceedings under Article 307 CPC in the event of filing a report. Such recordings, therefore, become an effective means of combating false accusations. A suspect informed that the activity will be recorded via images and sound will be less inclined to formulate allegations inconsistent with reality regarding the legality and correctness of the procedural activity conducted on him. Such behaviour of suspects constitutes an obvious departure from the defence against the charges brought against him permitted by criminal procedural law and should be associated with inevitable sentencing in a separate trial.

It cannot be overlooked that under Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984,[28] the Republic of Poland is obliged to take, among other things, effective legislative measures to prevent the use of torture. Moreover, Article 1 ECHR assumes that the High Contracting Parties ensure to every person subject to their jurisdiction the rights and freedoms specified in Chapter I, including the protection of Article 3 ECHR. The mandatory recording of images and sound of recorded activities, particularly the suspect interrogation, would satisfy the above requirement.

It is worth mentioning here that the Polish Ombudsman has been postulating such demands for several years. The Commissioner for Human Rights made numerous general statements to the Ministry of Justice.[29] However, this entity did not see the need for changes, arguing that the current regulations fully protect the procedural guarantees of the suspect in criminal proceedings.[30]

In its 2022 report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stressed the importance of recording suspects' interrogations as an effective tool to counteract inhuman or degrading treatment.[31] These conclusions were formulated based on a visit con-

[28] Journal of Laws 1989, no. 63, item 378.

[29] Rzecznik Praw Obywatelskich, *Nagrywanie czynności ze śledztwa i procesu karnego powinno być obligatoryjne*, 12.3.2020, https://bip.brpo.gov.pl/pl/content/rpo-nagrywanie-czynnosci-sledztwa-i-procesu-karnego-powinno-byc-obligatoryjne (access: 20.2.2025).

[30] Sekretarz Stanu, Odpowiedź na zapytanie Rzecznika Praw Obywatelskich w sprawie rozszerzenia obligatoryjności rejestrowania dźwięku lub obrazu i dźwięku na wszystkie czynności w postępowaniu karnym, 7.7.2022, https://bip.brpo.gov.pl/sites/default/files/2022-07/Odpowiedz_MS_przesluchania_nagrywanie_7.07.2022.pdf (access: 20.2.2025).

[31] Ministerstwo Sprawiedliwości, *Prawa człowieka w Radzie Europy*, https://www.gov.pl/web/sprawiedliwosc/prawa-czlowieka-w-radzie-europy (access: 20.2.2025).

ducted in Poland between 21 March and 1 April 2022. The Committee considered that the current legal regulations require urgent changes and recommended immediate implementation. The National Mechanism for the Prevention of Torture (KMPT – *Krajowy Mechanizm Zapobiegania Torturom*) presents similar recommendations in its reports. As it results from the KMPT report for 2019, many police units do not have specially designated rooms equipped with audiovisual recording equipment. Moreover, not all police units have the appropriate technical equipment to record images and sound. In one of the visited units, officers admitted that they did not know how to record such procedural activities and how to store them. The National Mechanism for the Prevention of Torture, therefore, recommends creating special rooms equipped with appropriate audio and video equipment to conduct interviews and police interrogations, as well as conducting training for officers on recording procedural activities and securing evidence from such recordings.

CONCLUSIONS

The introduction of mandatory recording of suspect interrogation activities using audiovisual devices would be beneficial both from the point of view of the interests of the justice system and the suspect himself. Preparatory proceedings are inquisitorial. At this stage, law enforcement agencies have a noticeable advantage over the suspect. Audio or video recording of interrogation activities would significantly improve the suspect's procedural situation and protect him from the use of prohibited interrogation methods, i.e., torture and cruel, inhuman or degrading treatment. Awareness of recording of this procedural act would also force the interrogators to be particularly sensitive and cautious in their behavior. This would also increase the quality of interrogations, translating into the overall reliability of criminal proceedings.

On the other hand, recording this activity would protect officers from groundless accusations from suspects, who often try to make a change in their procedural position credible in this way. Recording the interrogation activities, which would constitute an annex to the protocol, would enable each time verification of the protocol's compliance with the procedural reality. It would also be of great importance from the point of view of the later assessment of the evidence from the suspect's explanations by the court ruling on his criminal liability in terms of credibility and compliance with the evidence collected in the case. It cannot be overlooked that the video recording of interrogations of suspects has been successfully implemented in certain European countries for decades, which significantly contributes to the building of public trust in the justice system. Moreover, introducing this obligation would be cost-free because such an amendment would not require the introduction of implementing provisions to Article 147 CPC. After all, such regulations already exist in circulation.

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ABSTRAKT

Obecny model postępowania karnego zakłada fakultatywne nagrywanie obrazu i dźwięku z czynności protokołowanych, w tym z przesłuchania podejrzanego. Rejestracja audiowizualna z tego rodzaju czynności procesowej w praktyce jest rzadkością, co – mając na uwadze stopień rozwoju technologicznego – powinno zmuszać do głębszych refleksji. Protokoły przesłuchania nie stanowią wiernego odwzorowania czynności o szczególnie ważnym znaczeniu dla realizacji celów postępowania karnego. Nie oddają też pełnej wypowiedzi podejrzanego, kontekstu, w jakim wypowiadane

są jego słowa, oraz elementów składających się na tzw. komunikację niewerbalną. Proponowane w niniejszym artykule zmiany zakładają obligatoryjne nagrywanie wszystkich przesłuchań podejrzanych, co ma na celu uczynienie zadość wysokim standardom rzetelnego procesu karnego oraz ochronę oskarżonego przed torturami, nieludzkim lub poniżającym traktowaniem.

Słowa kluczowe: rejestracja obrazu i dźwięku z przesłuchania; podejrzany; tortury