

INTRODUCTION

Definitions and Typologies of Acts in Criminal Proceedings. Perspective of Conventionalisation and Formalisation is a spin-off of many years' and much broader study of the application of the ideas of formalisation and conventionalisation to the moulding and interpreting of acts in criminal proceedings. The original research results were published as *Formalizacja i konwencjonalizacja jako instrumenty analizy czynności karnoprocesowych w prawie polskim*, Poznan 2017, 651 pages, by the Adam Mickiewicz University Press. This monograph is a modified English-language version of its first two chapters. The idea behind the monograph is the conviction that the theory-of-law conception of conventional acts in law, enriched by the ideas of formalisation and conventionalisation, opens up an entirely new vista for the study of acts in proceedings by giving an opportunity to stress their special character. It is seen in their sequentiality and aggregateness, with the latter being observable in mereologic relationships holding between acts of particular types. The resulting analytical model of acts in criminal proceedings, underpinned methodologically and grounded in the theory of law, may be successfully used, it is hoped, to analyse other branches of law and the systems of procedural law of other countries. In particular, this refers to definitional and typological questions and despite the fact that the above model is country specific—it is anchored in the Polish system of criminal procedural law.

Moreover, it may be relevant, as an exemplification *sui generis*, also for broader research into conventional acts, performatives or constitutive rules. This being so makes out a case for presenting the research results in English as the translation will broaden the possibilities of subjecting them to multi-faceted critical verification, thus meeting the expectation of external controllability of such research. Further, availability of the work on the international stage will be in concord with the global popularity of the conceptions of performatives and constitutive rules, especially in the theory and philosophy of law and linguistics. The potential of the conception described in this work goes far beyond these fields; it may be successfully used in dogmatic research. Hence, it may be hoped that the above will inspire also scholars studying foreign legal systems.

The purpose of this work is to present a research model in which acts in criminal proceedings are treated as formalised, legally relevant conventional acts. Its overriding purpose, however, is to enrich the theory of acts in criminal proceedings by incorporating specific methodological and theory-of-law assumptions.

Their use enables the legislator to shape anew both particular types of acts and general solutions. The research has provided arguments to distinguish and describe the material substrate of a formalised, **conventional act in criminal proceedings (hereinafter referred to as formalised cA)**. The substrate consists in behaviour (or sometimes instances of behaviour) by a specific participant (sometimes participants) of a criminal trial. Moreover, as a result of the research, an original definition of an act in criminal proceedings was made possible and formulated, stressing its conventional and formalised status, and typological questions subsequently re-organized.

The monograph is divided into three chapters. Chapter 1 is devoted to the formation and evolution of the conception of conventional acts in law as developed by the Poznan-Szczecin School of Jurisprudence. Additionally, it outlines Austin's conception of performatives and Searle's theory of constitutive rules that has been subsequently developed. The latest modifications of the conception of conventional acts in law, involving the ideas of conventionalisation and formalisation, were taken into account as well. Hitherto, they had been left out of dogmatic discussions even in the area of civil law. It is these two constructions that exert a special influence on the moulding of acts in proceedings, enjoying a limited autonomy with respect to more complex courses of the criminal trial. Conventionalisation and formalisation are conducive to the legal assessment of acts in criminal proceedings, especially the issue of a strict distinction between their existence and validity, on the one hand, and their correctness and effectiveness, on the other. Using conventionalisation and formalisation, one may also sketch and organize, according to specific methodological assumptions, the broad issues concerning the defectiveness of an act in the criminal trial. It must be added, however, that the application of the concept of conventional acts in law to the interpretation of acts in criminal proceedings has certain shortcomings as well.

Chapter 2 attempts to confront the definitions and typologies of acts in proceedings, developed in the dogmatics of criminal procedural law, with the criteria of distinguishing acts in criminal proceedings viewed as formalised, legally relevant conventional acts. Other issues considered include basic criteria formulated for the material substrate of a conventional act in criminal proceedings. In this context, an attempt is made to relate the so-called action theory to acts in criminal proceedings. Relying on the theory of illocution, a designation is suggested for the effect of an act in criminal proceedings and a distinction is made between the illocutionary effect of a given cA and its trial effects (trial consequences or outcomes). Furthermore, an act in criminal proceedings is contradistinguished from its product, which helps derive particularly meaningful consequences in respect of so-called permanent products and the most meaningful ones in respect of judicial decisions treated as products of acts in proceedings, consisting in making an imperative declaration of will.

Chapter 3 discusses the significance of acts in criminal proceedings for the rise of criminal trial relations. The discussion expressly refers to Zygmunt Ziemiński's conception of a competence norm and attempts to go beyond mere descriptions of legal relations prevailing hitherto in procedural law studies. The reference to the construction of a criminal trial relation underscores the conventional feature of acts in proceedings, namely their sequentiality.

The choice of the subject and the need to refer to publications from two different fields has made the present author decide to include direct quotations and not paraphrases in an attempt to achieve maximum precision. It is believed that such precision is necessary when two fields of law studies, each with its own particular (at least to a degree) terminology, come to be players on the same stage. The decision to publish this work in English affords the reader access to citations and their arguments that would otherwise for the most part be available only in Polish.