

Kamil Federowicz

**“Premises for the application of the special interview procedures  
provided for under Articles 185a – 185c of the Code of Criminal Procedure”**

(Przesłanki stosowania szczególnych trybów przesłuchań określonych w art. 185 a – 185 c k.p.k.)

**SUMMARY**

Phd thesis prepared  
at the Department of  
Criminal Procedure and Criminalistics  
under supervision of  
Prof. zw. dr hab Tomasz Grzegorzczuk

**Lodz 2018**

The objective of the present thesis is a holistic analysis of the premises for the admissibility of application of the special interview procedures provided for under Articles 185a – 185c of the Code of Criminal Procedure, which has been conducted on the plane of procedural criminal law *sensu largo* and combined with an attempt at resolving existing doctrinal and judicatory questions and divergences concerning the understanding of the conditions under which such interview procedures can be used, in particular in light of the modifications introduced by the Act of 13 June 2013 amending the Act on the Criminal Code and the Act on the Code of Criminal Procedure (Journal of Laws of 2013, item 849), which have made it necessary to re-evaluate a considerable number of the positions voiced hitherto, while at the same time taking into consideration those regulations of international law and European Union law that significantly influenced the elaboration and introduction of the aforementioned amendments.

Another element of the study, equally important, is the attempt to find an answer to questions concerning the possibility of using interviews of this type on the basis of procedures that refer to the appropriate application of the provisions of the Code of Criminal Procedure. The deliberations, analyses and interpretations set forward in the thesis are oriented towards the possible coincidence of special interview procedures with other institutions of procedural criminal law, and focus on the presentation of solutions to the majority of interpretational and practical problems that may be encountered when attempting to correctly apply the interview procedures specified in Articles 185a – 185c of the Code of Criminal Procedure with respect to subjects. Further, the dissertation is supplemented with comments pointing out and substantiating the need of introducing changes to existing legal solutions.

In order to ensure its clarity and legibility, the study has been divided into five topical chapters, and these in turn into subchapters, which systematise and organise the contents. Chapter I is intended as a description of the placement of international law and European Union law in the national legal order, and also of the standards of protection provided under international law and European Union law for juvenile witnesses and adult witnesses harmed by certain types of prohibited acts, together with an analysis of the relevant key regulations.

The next chapter contains a broad discussion of the reasons for the introduction of, firstly, the regulations of Article 185a of the Code of Criminal Procedure, and thereafter of

Article 185b of the Code of Criminal Procedure, along with subsequent amendments thereto, and ends with a presentation of the grounds for the adoption of Articles 185c and 185d of the Code of Criminal Procedure. Furthermore, this section contains references to intertemporal issues connected with the modification and successive entry into force of the interview procedures specified in the aforementioned provisions, and to the relation between these legal regulations and other provisions concerning the interviewing of witnesses. The author has also proposed a classification of the premises governing the application of each of the interview procedures introduced through Articles 185a – 185c of the Code of Criminal Procedure, these broken down into: (i) conditions under which interviews of such type should be performed and (ii) premises governing the admissibility of these proceedings to take evidence as such, with the latter being further broken down according to proposed criteria, i.e. whether they concern a person or criminal proceedings and the object thereof, whether they concern the first or any successive interview, and into objective premises pertaining to the first or a successive interview, and into subjective premises relating to the first or a successive interview.

Further on in the study the author has focused on the objective premises pertaining to the first interview, attempting to provide a clear and legible presentation of the factors, motives and obligatory objective conditions determining the applicability of the interview procedures in question.

The next part of the dissertation contains an analysis of the subjective premises relating to the first interview, with a division thereof into positive and negative premises. Among the former, the following concepts have been analysed: (i) the injured party, (ii) the witness, (iii) the age of the injured party and the witness during the interview, (iv) minority, and also (v) the issue of the potentially harmful impact of other conditions of the interview or of the presence of the accused on the injured party or the witness. Within the second group, the following issues have been considered: (i) the cooperation of the witness in the committal of a prohibited act, (ii) the key witness and *incognito*, as well as (iii) issues of the witness' absolute incapacity to provide testimony, (iv) the right to refuse testimony, (v) the exemption from the obligation to provide testimony, (vi) being bound to maintain secrecy, and (vii) the consent of the representative of the witness to the provision of testimony. An analysis has also been performed of the mutual relations between premises relating to special interview procedures.

Chapter V is devoted in whole to deliberations on the objective and subjective premises for a repeat interview under special procedures and on other circumstances which may justify the repetition of an interview. Among the former, the author has touched upon, *inter alia*, (i) the issue of the revealment of important circumstances, the clarification of which requires conducting a new interview, (ii) circumstances substantiating a successive interview in the course of preparatory proceedings under the procedure provided for in Article 185c, §2 of the Code of Criminal Procedure, and (iii) the concept of the necessity of conducting a successive interview, referred to in Article 185c, §3 of the Code of Criminal Procedure. As regards subjective premises, in turn, attention has been focused on the issue of the request of an accused who did not have defence counsel during the first interview as a premise for repeating an interview; incidentally, this topic has given rise to numerous discussions and disputes, leading to considerable controversy both in doctrine and the administration of law. Due to the occurrence of other, additional circumstances substantiating the repetition of an interview, this part of the dissertation also contains an analysis of issues: (i) connected with the conduct of an interview by a court of law that does not have factual jurisdiction, (ii) in the event of the improper composition of the court conducting the hearing, (iii) an interview being conducted by an unauthorised body or by a judge who has been disqualified by exclusion, (iv) the non-participation of authorised persons in interviews (these including an expert psychologist), (v) the fact that an interview was conducted once whereas the dates for sessions or hearings during which interviews were conducted were multiple, (vi) the separation of a case and its referral to different proceedings, and (vii) other procedural developments and situations that may justify conducting a repeat interview under special procedures.

The thesis ends with a presentation of the conclusions following from the contents of its individual chapters, which have been expressed as referencing *de lege lata* or *de lege ferenda*.

Krzysztof Fedorowicz  
5.10.2018r.