

Code of Criminal Procedure

Act of 6 June 1997

(...)

Part VII

PREPARATORY PROCEEDINGS

(...)

Chapter 34

Instituting investigation or inquiry

Article 303. If there is good reason to suspect that an offence has been committed, an order on instituting an investigation or inquiry shall be issued, either *ex officio* or upon receiving a notice of an offence, describing the act in question and setting forth its legal classification.

Article 304. § 1. Whoever learns that an offence prosecuted *ex officio* has been committed, shall be under civic duty to inform the state prosecutor or the Police.

§ 2. State or local government institutions which in connection with their activities have been informed of an offence prosecuted *ex officio*, shall be obligated to immediately inform the state prosecutor or the Police thereof. In addition they are obligated to take steps not amenable to delay, until the arrival of the officials of an agency authorised to prosecute such offences, or until that agency issues a suitable ruling in order to prevent the effacing of traces and evidence of the offence.

§ 3. The Police shall immediately refer a notice of an offence for which conducting an investigation is compulsory, or their own information indicating that such an offence has been committed, to the state prosecutor, together with any materials collected.

Article 305. § 1. Having received notice of an offence, the agency authorised to conduct the preparatory proceedings shall be obligated to issue immediately, an order on instituting or the refusal to institute an investigation or inquiry.

§ 2. An order on the institution, refusal to institute or on discontinuance of an investigation shall be issued by the state prosecutor.

§ 3. An order on the institution of an inquiry shall be issued by the Police who then immediately forward a copy of the order to the state prosecutor. An order on refusal to institute or on discontinuance shall be issued by the state prosecutor or the Police; the order issued by the Police shall be approved by the state prosecutor.

§ 4. The person, the State, local government or community institution which submitted a notice of an offence, and the injured disclosed shall be notified of the institution, refusal to institute or on discontinuance of investigation or inquiry. The suspect shall also be notified of the discontinuance -- along with a notification of their rights.

Article 306. § 1. The injured person and the institution specified in Article 305 § 4 shall have the right to bring interlocutory appeals against an order refusing to institute an investigation or inquiry, and the parties shall have such right with respect to the order on discontinuance. Those having right to bring an interlocutory appeal shall have the right to inspect the files of the case.

§ 2. The interlocutory appeal shall be brought to a state prosecutor superior to the state prosecutor who has issued or approved the order. If the superior prosecutor does not grant the appeal it shall be brought to the court.

§ 3. A person or institution which submitted a notice of offence and who has not been notified within 6 weeks about the institution or refusal to institute the investigation or inquiry shall have a right to bring an interlocutory appeal to the superior state prosecutor or one authorised to supervise the agency to which the notice has been submitted.

Article 307. § 1. If necessary, it may be demanded that the data contained in the notice of the offence committed shall be completed within a specified time-limit, or a verification of the facts in the matter may be ordered. In that case the order instituting the investigation or inquiry, or refusing the institution should be issued within 30 days of the day on which the notice was received.

§ 2. In the verifying proceedings no evidence from an expert opinion or actions requiring records are undertaken, except for taking an oral notice of the offence or a motion for prosecution and the action specified in § 3.

§ 3. The data contained in the notice of offence may also be completed by examining the notifying person in the capacity of a witness.

§ 4. When actions referred to in § 3 are needed, the Police notifies the state prosecutor about undertaking the same.

§ 5. Provision of § 2 shall apply accordingly, in the event that a prosecution agency undertakes the verification of their own information leading them to suppose that an offence has been committed.

Article 308.1. Within the limits necessary to secure evidence of the offence against loss, distortion or destruction, the Police in cases not amenable to delay, may always carry out the necessary inquiries. This can be done even before the issuance of the order on the institution of the investigation or inquiry and they can in particular inspect, if necessary, with the participation of experts, conduct searches and effect the other action set forth in Article 74 § 2 subsection (1) with respect to the suspect, and undertake all other necessary actions, including taking blood and excretory samples for tests. Upon completing such activities in cases in which investigation is mandatory, the person conducting the inquiry shall refer the case to the state prosecutor without delay.

§ 2. In cases not amenable to delay, and particularly if a delay might result in the effacing traces or evidence of an offence, a person suspected of committing the offence may be examined as a suspect prior to the issuance of an order on the presenting charges, if there are grounds for the issuance of such an order. The examination shall begin by informing the suspect of the contents of charge.

§ 3. In cases specified in § 2 the state prosecutor, shall not later than 5 days from the day of the examination, issue an order on the presentation of charges, or by refusing its issuance, shall discontinue the proceedings with respect to the person examined.

§ 4. The actions referred to in § § 1 and 2 may only be conducted within 5 days of the first action.

§ 5. In the cases specified in § 1 and 2 the duration of the investigation or inquiry is calculated from the day of the first action.

Chapter 35

Conduct of investigation and inquiry

Article 309. § 1. An investigation shall be conducted in cases:

1) of crimes

2) of misdemeanours specified in Articles 152 through 154, Article 154 § 1, Article 164 § 1, Article 173 § 1, Article 174 § 1, Article 189 § 2, Article 207 § 3, Article 233 § 1 and 4, Articles 246, 247, 249, 250, 254 § 2, Article 258 § 3, and in Article 265 § 2 of the Penal Code.

3) of other misdemeanours if the jurisdiction is vested in the Voivodship Court,

4) if the suspect is an official of the Police, Office of State Protection, Border Guards or financial inquiry agencies, or

5) of misdemeanours not listed in subsections 2 through 4 if the state prosecutor so decides by reason of the significance or complexity of the case.

§ 2. An investigation should be completed within three months.

§ 3. In justified cases the period of the investigation may be extended by a state prosecutor superior for a further specified time-limit but not exceeding one year. In particularly justifiable cases the Attorney General may extend the period of investigation for a further prescribed period.

Article 310. § 1. In cases where investigation is not mandatory, an inquiry is conducted.

§ 2. An inquiry should be completed within one month. The state prosecutor who supervises the inquiry may extend this period for up to 3 months.

§ 3. If the inquiry is not concluded by the end of the three-month period the files of the case shall be referred to the state prosecutor supervising the inquiry who may either extend its duration for a prescribed period, not exceeding 3 more months, or take over the inquiry for investigation.

Article 311. § 1. The investigation shall be conducted by the state prosecutor.

§ 2. The Police shall conduct the investigation unless it is being conducted by the state prosecutor.

§ 3. The state prosecutor may delegate to the Police:

- 1) to carry out the investigation or inquiry that he conducts, in whole or to some limited extent, or
- 2) to discharge the particular investigative actions.

This provision does not apply to the case specified in Article 309 § 1 subsection 4.

§ 4. The delegating of duties set forth in § 3 may not include actions which require an order to be issued, nor any actions connected with presenting charges, amendment of an order on presenting charges or concluding the investigation or inquiry; Article 308 § 2 and 3 may, however, apply.

§ 5. The agency of the Police which conducts the mandated actions of the investigation or inquiry, may conduct other actions which arise in connection with conducting the mandated actions, save for actions specified in § 4.

Article 312. The same procedural rights as the Police shall also be the province of:

- 1) the units of the Border Guards, Office of State Protection and agencies of financial control in their respective fields of competence.
- 2) other agencies set forth in special regulations.

Article 313. § 1. If the data exists at the time of the institution of an investigation or inquiry or is collected during their course, and contains grounds sufficient for suspicion that an act has been committed by a specified person, an order on presenting charges shall be issued and announced without delay to the suspect, who shall then be examined.

§ 2. An order on presenting charges shall specify the identity of the suspect, detailed data on the act imputed to him and the legal classification thereof.

§ 3. The suspect may request, before he is given notice of the date on which he can review the files of the preparatory proceedings, that he should be given an oral presentation of the grounds for charges, and that these reasons should be prepared in writing. The suspect should be instructed of his right to make such a request and the statement of reasons shall be served upon the suspect and a counsel retained by him within fourteen days.

§ 4. The statement of reasons for such an order should in particular, indicate what facts and evidence were adopted as the grounds for the charges.

Article 314. If during preparatory proceedings it transpires that the accused should be additionally charged with an act not included in a previous order on the presentation of charges, or an act essentially different in nature or form from the act theretofore imputed to him, or that the imputed act should be classified under a more severe provision, a new appropriate order shall be issued and promptly communicated to the suspect, who shall then be examined. The provisions of Article 313 § 3 and 4 shall apply accordingly.

Article 315. § 1. The suspect and his defence counsel as well as the injured person and his attorney may submit motions to cause certain actions to be performed within the framework of investigation or inquiry.

§ 2. The party which submitted the motion, his counsels and attorneys may not be refused admission to participate in the action if they so demand. The provision of the second sentence of Article 318 shall apply.

Article 316. § 1. If the investigative or inquiry actions cannot be subsequently repeated at the trial, the suspect, the injured person and their legal representatives, as well as the defence counsel and the attorney of the injured person, if so appointed, should be admitted to participate in the action, unless there is a danger of loss or distortion of evidence in case of delay.

§ 2. The appearance of a suspect deprived of liberty shall not be procured, if a delay were to lead to a danger of loss or distortion of evidence.

§ 3. If there is a danger that the suspect cannot be heard at the hearing, a party or the state prosecutor or other agency conducting proceedings, may submit a motion demanding that the suspect be heard by the court.

Article 317. § 1. The parties, and a defence counsel and an attorney if such have been appointed in the case, shall be admitted on request to participate in other investigative or inquiry actions.

§ 2. In a particularly justifiable case, the state prosecutor may, by means of an order, deny such a request if the interests of the investigation or inquiry so require, or refuse to procure the appearance of a suspect deprived of liberty if it would involve serious difficulties.

Article 318. If evidence based on an opinion issued by experts, a scientific institute, or a specialised establishment is admitted, the suspect and his defence counsel, and the injured and his attorney shall be served with the order on the admission of this evidence and permitted to participate in the examination of experts and to acquaint themselves with the opinion, if one has been prepared in writing. The appearance of a suspect deprived of liberty shall not be procured, if this were to involve serious difficulties.

Article 319. The inquiry may be limited to finding whether there are sufficient grounds to bring an indictment or to conclude proceedings otherwise. However, the actions set forth in Articles 313, 314 and Article 321 should be conducted, the suspect and the injured should be examined, and actions which cannot be repeated should be conducted and recorded. The recording of other actions might be abandoned, with official notes prepared instead.

§ 2. A party may motion that records should be made of any of evidentiary actions.

Article 320. If it is relevant in connection with a respective motion to the court, the state prosecutor may, on his own initiative, or with the consent of parties, refer the case to a trustworthy institution or person in order to conduct a mediation procedure between the suspect and the injured.

§ 2. Having conducted the mediation proceedings, a trustworthy institution or person shall prepare a report on its course and results, which the state prosecutor shall take into account when deciding on submission to the court of the respective motion referred to in § 1.

§ 3. The Minister of Justice shall set forth, by ordinance, conditions to be met by institutions and persons authorized to conduct mediation, the scope and terms of giving them access to the case files, as well as the principles and procedures for preparing reports on the course and results of the mediation proceedings.

Chapter 36

Conclusion of the investigation or inquiry

Article 321. § 1. If there are grounds to conclude the investigation or inquiry, the person conducting the proceedings notifies the suspect and the defence counsel of the date of final examination of the materials of the proceedings, advising them of their right to examine files at an earlier suitable date, set forth by the agency conducting the trial.

§ 2. The date for the suspect to inspect the materials of the proceedings should be set allowing at least 7 days between the day of the service of the notice to the suspect and his defence counsel and the date of inspection.

§ 3. The defence counsel shall be permitted to participate in the inspection of the files by the suspect. In the cases specified in Article 79, the participation of the defence counsel shall be mandatory.

§ 4. Failure of the suspect to appear or -- except for cases specified in Article 79 -- his defence counsel, shall not stop further proceedings.

§ 5. Parties may, within three days of the suspect acquainting himself with the materials of the case, submit motions to supplement the proceedings.

§ 6. If there is no need to supplement the investigation or inquiry, an order shall be issued on concluding the same; this shall be announced or its contents communicated to the parties, their attorneys and defence counsels.

Article 322. § 1. If the proceedings have failed to disclose grounds sufficient to justify the preparation of an indictment, and the conditions specified in Article 324 do not occur, the preparatory proceedings shall be discontinued, without the necessity of inspecting the materials of the proceedings and their conclusion.

§ 2. An order discontinuing the proceedings shall contain, apart from the data specified in Article 94, a detailed description of the act and its legal classification and an indication of the causes of discontinuance.

§ 3. If the proceedings are discontinued after the issuance of an order on presentation of charges or examination of a person as a suspect, the order of discontinuance should also include the name and surname of the suspect and, when necessary, other data regarding such person.

Article 323. § 1. If the proceedings are discontinued the state prosecutor shall issue an order concerning material evidence, as required by Articles 230 through 233.

§ 2. The order described in § 1 shall be subject to interlocutory appeal by the suspect, by the injured person and by any other person from whom such objects have been taken or who has submitted a claim with respect to them.

§ 3. After the order on discontinuance becomes valid and final the state prosecutor, in the event of the occurrence of the grounds specified in Article 99 § 1 or Article 100 of the Penal Code, shall move to the court, requesting the imposition, as a precautionary measure, of forfeiture, as specified in Article 39 subsection 4 of the Penal Code.

Article 324. If it is found that the suspect committed an act in the state of non-accountability, and there are grounds to apply the precautionary measures, the state prosecutor having concluded the investigation or inquiry, may move to the court for the discontinuance of proceedings and application of precautionary measures. Provision of Article 321 shall apply accordingly.

Article 325. An order on the suspending of a proceeding which has not been issued by the state prosecutor, should be ratified by him in writing.

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