The Scientific School of Philosophical and Legal Thought in Criminal Proceedings of Marian Cieślak

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The aim of the article is to show that Professor Cieślak is the founder of the scientific school of philosophical and legal thought in criminal proceedings and five thoughts belonging to this school regarding the subject of the criminal process, the identity of a deed, participants in the process, the burden of the proof, the obligation of proving, and division the grounds for detention. Professor Cieślak was one of the most distinguished Polish lawyers and scientists, and had a great influence on shaping views on the law, primarily in theory, but also in practice. His concepts result from his theoretical and philosophical research on the law and are also timeless, remotely dependent on the legislation currently in existence.

Keywords: criminal proceedings, criminal procedure, Polish lawyers, Polish scientists, identity of a deed, participants of the criminal trial, proof, arresting

Introduction

Next year, that is 2020, it will have been exactly passing 10 years after the death of one of the most important Polish lawyer dealing with criminal law in science, Professor Marian Cieślak. He was born on October 18, 1921 in Mogilno in central Poland. In 1947, he became a master of law, in 1949, he obtained the title of doctor of law, and he became a professor in 1967. He worked at first at the Jagiellonian University in Krakow, and then from 1974 at the University of Gdańsk. He was a scholar who created his own scientific school of philosophical and legal thought in criminal proceedings, because the results of his research were taken over by many lawyers and scientists, primarily in Poland, including Professor Stanisław Waltoś, Professor Andrzej Gaberle, Professor Jerzy Skorupka, Professor Stanisław Steinborn, and Professor Krzysztof Woźniewski. However, Professor Cieślak also participated in the international scientific life, by giving guest lectures and scientific lectures at foreign research centers and publishing 49 works in foreign languages, including reputable scientific journals abroad (Waltoś, 2011).

The aim of the article is to show the most important assumptions of philosophical and legal thought in criminal proceedings from the scientific school of Professor Cieślak. This will include five thoughts concerned the subject of the criminal process, the identity of the deed, the participants in process, the burden of proof, the obligation of proving, and division the grounds for detention. These thoughts result from his theoretical and philosophical research on law and are also timeless, remotely dependent on the still-extent legislation.

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Thought 1: About the Subject of the Criminal Process

The subject of the criminal process is something the process is about or something what it is going in the process, regardless of the specific circumstances or the type of process (Cieślak, 1959, p. 335).

According to Professor Cieślak, the subject of the criminal process is the issue of legal liability for a criminal deed. He published his idea in 1957 in the work entitled Przewodnik do Nauki Procesu Karnego (A Guide to Learn the Criminal Process), but developed it two years later in a scientific article entitled “O pojęciu przedmiotu procesu karnego i w sprawie tzw. ‘podstawy procesu’ (About the term of the subject of the criminal process and in the case of so called ‘the basics of the process’).” The present acceptance of this thought as obvious demonstrates the great influence of the philosophical and legal thought of Professor Cieślak on other representatives of the doctrine. Earlier, on the basis of the work written by Professor Leon Schaff entitled “Wszechcie postępowania karnego a problematyka podstawy i przedmiotu procesu (The initiation of criminal proceedings and the issue of the basis and the subject of the process)”, it was considered that the subject of the criminal process was the criminal deed itself (Waltoś, 2011, p. XIX).

In Professor Cieślak’s scientific article from 1959, he quoted the wording of Professor Schaff, that “the subject of the process is <<this circumstance if the offense which existing is invoked in the version of prosecution, exists or does not exist objectively (actually)>>” (highlighting in the original). Professor Cieślak adjudged that the definition goes

to the correct methodological plane, but on the condition that it means the same as: <<the subject of the process is whether the crime was actually committed>>, so in fact - <<a question about the fact of committing crimes>>, in the other words <<the issue of committing a crime>>. (highlighting in the original) (Cieślak, 1959, pp. 335-336)

According to Professor Cieślak, the issue of committing a crime means an intellectual dispute, the fight of opposing arguments and reasons, whether the crime was committed and whether the accused should take the consequences and what should be the consequences (Cieślak, 1959, p. 336). In this manner, Professor Cieślak (1959, p. 339) showed his way of reasoning, which led to the conclusion that the subject of the criminal process is the issue of legal liability for a specific criminal deed.

Legal responsibility, which is the subject of the criminal process, was defined by Professor Cieślak as the legal consequences of the deed (Cieślak, 1959, p. 339). At the same time, he made the assumption that “a criminal deed is the factual basis of legal responsibility in the criminal process; the legal basis for this responsibility is the relevant legal provisions” (highlighting in the original) (Cieślak, 1959, p. 340).

In spite of a thorough description of the concept of the subject of the criminal process in the presented article from 1959, Professor Cieślak gave a more detailed definition of the legal responsibility and divided this legal responsibility into categories in the textbook entitled Polska Procedura Karna. Podstawowe Zasady Teoretyczne (Polish Criminal Procedure: The Basic Theoretical Assumptions), already in the first edition from 1971 and in subsequent editions (Waltoś, 2011, p. XIX). According to Professor Cieślak “<<legal liability>> in a criminal process boils down to adverse material and legal consequences adjudicated in case of proving to the accused that she or he committed a prohibited act” (highlighting in the original) (Cieślak, 1984, p. 298). The legal responsibility that this is about is divided into:

(1) criminal liability, id est any criminal sanctions;
(2) civil liability, *id est* claims regarding repair of caused damage;
(3) legal consequences of conviction on other branches of law. (Cieślak M., 1984, p. 298)

The way of presenting the subject of the criminal process, proposed by Professor Cieślak, appears later in other textbooks of the criminal process, what demonstrates that this thought belongs to his school of science (Waltoś, 2011, p. XIX). As an example, the author can give the textbook by Professor Waltoś and Professor Piotr Hofmanski entitled *Proces Karny. Zarys Systemu* (Criminal Process: Outline of the System) from 2013, where referring explicitly to Professor Cieślak, they write that the subject of the criminal process is a term that answers the question to “What the process leads up?” and they indicate that it leads up to determining the liability of the accused (Waltoś & Hofmanski, 2013, p. 26). Similarly, directly referring to the article by professor Cieślak from 1959, a textbook edited by Professor Skorupka entitled *Proces Karny* (Criminal Process) from 2017 gives that “the subject of the process is the issue of committing a crime, and then—the problem of the criminal liability and the possible civil liability of a specific person for the crime which she or he has been accused” (Skorupka, 2017, p. 29). Previously, there had been the thing about the subject of the criminal process made by Professor Cieślak *inter alia* in the textbooks: Professor Mieczysław Siewierski, Professor Janusz Tylman, Professor Marek Olszewski entitled *Postępowanie Karne w Zarysie* (Criminal Proceedings in Outline) from 1971 and Professor Kazimierz Marszał entitled *Zagadnienia Ogólne Procesu Karnego* (General Issues of the Criminal Process) from 1985 (Waltoś, 2011, p. XIX).

**Thought 2: About the Criteria for the Identity of a Deed**

The identity of a deed means the identity of a deed alleged in resolution of charges or in the indictment with a deed attributed to the accused in the sentence (Cieślak, 1960, p. 384).

The first time about the issue of the identity of a deed and its consequences for the criminal process, in particular, the possibility of changing the legal qualification of a deed in a given criminal process wrote Professor Cieślak in the article entitled “Glosa do wyroku z 14 II 1959 R., V K 134/59 (Gloss to the verdict from 14 II 1959 R., V K 134/59)” (Waltoś, 2011, p. XIX). He explained here that he considered this issue important, because if the court finally sentences for the other deed than alleged in the indictment, it will be a violation of the principle of accusatorial procedure because, according to this principle, the court cannot convict for any deed other than the prosecutor demands but it would just happen (Cieślak, 1960, p. 379). He signaled that in order the identity of a deed to occur, both deeds had to fall within the same factual event, *id est* there should be the same time and place of action, the person of the accused and the activity performed by him (Cieślak, 1960, p. 384). In the scope of the identity of a deed, both deed’s legal classification and its character from felony to offence may be changed (Cieślak, 1960, p. 384). Professor Cieślak developed his thought in the textbook entitled *Polska Procedura Karną. Podstawowe Założenia Teoretyczne* (Polish Criminal Procedure: The Basic Theoretical Assumptions), already in the first edition from 1971 and in subsequent editions (Waltoś, 2011, p. XIX). Here for the too-large intuitiveness, he criticized the previously dominant concept of Professor Śliwiński according to which the identity of a deed occurs when << the judge’s decision did not go beyond the boundaries of the same factual event, which is the basis of the accusation and which the prosecutor had in mind seeing the crime in its course. (highlighting by Cieślak) (Cieślak, 1984, pp. 300-301)

First of all Professor Cieślak remarked that “speaking about the issue of ‘the identity of a deed’ in the
process, we do not compare two actions indeed, but only two procedural reconstructions (descriptions) of the same specific deed” (highlighting in original) (Cieślak, 1984, p. 300). There was just one deed historically, only imaginations and reflections of it arise in the process. “If the two procedural reconstructions (reflections) of a deed do not vary in a significant way, we say that it is going about the same deed” (Cieślak, 1984, p. 300). Along these lines, two different photographs of the same person are still photos of the same person (Cieślak, 1984, p. 300).

So we see that the formula of the identity (identicalness) of a deed, as a criterion for the admissibility of a change in factual findings, does not help much, because we do not know then when the change in this findings is to decide about recognizing the non-identity of deeds. (Cieślak, 1984, p. 300)

Moreover, Professor Cieślak explained that the identity of a deed is preserved if during the process the description of the act is not changed significantly. This does not exclude irrelevant changes (Cieślak, 1984, pp. 299-300). In the concept of Professor Śliwiński determining which changes in the description of the deed should be considered significant and which are irrelevant, is based on imprecise and intuitive feelings. Hence, Professor Cieślak decided that science should establish objective criteria for the identity of a deed, instead of intuitively determining them. He stated that it is easier to set negative criteria, indicating when the diversity of descriptions excludes the acceptance of their unity and tried to formulate such criteria. First of all, “the diversity of the entities of the deed always excludes identity” (highlighting in the original) (Cieślak, 1984, p. 301). So always, if the accused should be a different person than is, it is going about a different the deed. Secondly, “the diversity of legal goods (objects of protection) excludes the identity of the deed)” (highlighting in the original) (Cieślak, 1984, p. 301). For example, a deed against health will never be a deed against property. Thirdly, “the difference in the victim’s person excludes the identity of a deed only when it is connected with any difference regarding the place of the act, the time of the act, the executive object or statutory signs of the act” (highlighting in the original) (Cieślak, 1984, p. 302). “Furthermore the identity of a deed is excluded if among two its reconstructions there are differences so significant that according to a reasonable life assessment, they cannot be considered as the reconstruction of the same factual event” (highlighting in the original) (Cieślak, 1984, p. 302). In addition,

the more differences in the two compared reconstructions of a deed, the easier it is to create a confidence that between these terms there is integrally taking into account an important difference justifying the exclusion of identity. So the sum of non-significant differences can create a significant difference. (highlighting in the original) (Cieślak, 1984, p. 303)

Finally, Professor Cieślak (1984, p. 303) supplemented his considerations with the consequences of determining the non-identity of a deed. In the case determining of non-identity of the deed in the preparatory proceedings, the defendant should be immediately introduced a new resolution of charges; however, in the jurisdiction proceedings, the process should be terminated by issuing a judgment acquitting or discontinuing process depending on the procedural situation, which does not prevent the implementation of the new criminal process for this other deed.

The described thought about the criteria for the identity of a deed belongs to the scientific school of Professor Cieślak because it finds its followers, some of whom have now recognized that the criteria for the identity of a deed given by Professor Cieślak are the only acceptable ones (Waltoś, 2011, p. XX). For Professor
The negative criteria for the identity of a deed are adopted primarily by Professor Waltoś and Professor Hofmanski (2013) in the textbook entitled Proces Karny. Zarys Systemu (Criminal Process: Outline of the System), directly invoking Professor Cieślak. It does not diminish the role of Professor Cieślak, that Professor Waltoś and Professor Hofmanski (2013) added a fourth criterion for the lack of identity of a deed in the form of: “there was no change of person of the victim, but there came forward four differences regarding the place of the act, the time of the act, the executive object and statutory signs of the act” (p. 30). Previously, the negative criteria for the identity of a deed had been also reproduced among others by Professor Stanisław Stachowiak (1975) in the book entitled Funkcje Zasady Skargowości w Procesie Karnym (The Functions of the Principle of Accusatorial Procedure in the Criminal Process) and Professor Marszał (1985) in the textbook entitled Zagadnienia Ogólne Procesu Karnego (General Issues of the Criminal Process) (Waltoś, 2011, p. XI).

**Thought 3: About Participants in the Process**

A participant in the criminal process is called “an entity involved in the criminal process in the role defined by the procedural law” (highlighting in the original) (Cieślak, 1984, p. 33).

Professor Cieślak called synthetically all entities involved in the criminal process as the participants of the process and made their appropriate distinctions in the textbook entitled Polska Procedura Karna. Podstawowe Zasady Teoretyczne (Polish Criminal Procedure: The Basic Theoretical Assumptions), already in the first edition from 1971 and in subsequent editions. Previously, the entities of the process were not collectively called when were described, such as for instance professor Stefan Kalinowski in the textbook entitled Postępowanie Karne. Zarys Części Ogólnej (Criminal Proceedings: An Outline of the General Part) or the category “subjects of the criminal process, their statutory representatives and helpers” was used, such as Professor Śliwiński (1948) in the textbook entitled Polski Proces Karny Przed Sądem Powszechnym. Zasady Ogólne (Polish Criminal Process Before a Common Court: General Rules) and in subsequent edition or the category of “court and parties” was used like Professor Schaff (1953) in the textbook entitled Proces Karny Polski Ludowej (Criminal Process of People’s Poland) (Waltoś, 2011, p. XX).

Developing the term of a participant in the process, Professor Cieślak wrote that such a participant “is only that person or collective entity whose role was provided in the criminal procedural law and for which from these rights arise duties and rights as well as procedural burdens” (highlighting in the original). It is going about individuals as well as social and legal creations (legal persons or organizational units without legal personality). Professor Cieślak (1984, p. 33) gave examples of participants in the process: It will be not only an accused, a police officer who led the accused to a trial or witness, but also a court.

Then Professor Cieślak (1984, p. 33) divided the process participants into the following groups:

1. procedural authorities;
2. procedural parties and “quasi-parties”;
3. spokespersons for interests (social and individual);
4. process representatives;
5. process assistants;
6. personal sources of evidence.

Professor Cieślak (1984) explained what the various categories of participants in the process mean. And so “the procedural authorities is a state body acting in the role prescribed by law in the criminal process” (highlighting in the original), for example, court, prosecutor (pp. 33, 34). “The party is the legal
entity with own interests involved in the litigation in the relevant procedural role" (highlighting in the original), primarily the prosecutor and the accused (Cieślak, 1984, p. 35). Quasi-parties are the subjects of incidental proceedings concerning narrower legal questions than the issue of the defendant’s legal liability, for example, entities in the proceedings with the case of the imposition of a fine on the witness (Cieślak, 1984, p. 41). A spokesperson for an interest is an entity that has powers, such as a party in the process, but the interest which he or she defends is never his or her own interest, it is a social interest, that is the public interest, or an individual interest, for example, a legal guardian of a minor victim (Cieślak, 1984, p. 42). A process representative “is a person acting in the process in the interest of the party and on its account under the appropriate legal title”, for example, a mandatory, defense counsel (Cieślak, 1984, p. 45). Process assistants “are persons who perform non-autonomous functions in the process, auxiliary to the activities of other participants”, for instance, recording clerks, translators (Cieślak, 1984, p. 46). Personal sources of evidence “are persons who provide evidence to the procedural authorities”, for instance, a witness, an expert (Cieślak, 1984, p. 46).

The term of “participants in the trial” only after several years gained recognition in the doctrine and began to appear in the textbooks of the criminal process (Waltoś, 2011, p. XX). However, the fact that the term was used in the doctrine shows that it also belongs to the scientific school of Professor Cieślak. The term of “participants in the process” and their division given by Professor Cieślak is repeated in a virtually unchanged form by Professor Waltoś and Professor Hofmanski (2013) in the textbook entitled Proces Karny. Zarys Systemu (Criminal Process: Outline of the System). The only update is the statement that some from the rights of the participants in the process may result not only from the Code of Criminal Procedure, but also from the legal acts under the bills (Waltoś & Hofmanski, 2013, pp. 151, 152). Similarly, the textbook edited by Professor Skorupka (2017) entitled Proces Karny (Criminal Process) repeated the definition of the participants in the process and their distinctions made by Professor Cieślak. It is not detracted by the fact that it misses the names of some from the participants in the criminal trial, id est it omits the so-called quasi-parties, spokespersons for the social interest are exchanged for a social representative and process assistants are exchanged for the employees of procedural authorities. This textbook also reminds that at various stages of the criminal process, all identifiable participants in the process will not participate in it and that one person may assume different procedural roles (Skorupka, 2017, p. 298). The term of participants in the process had also earlier been repeated among others by Professor Kalinowski in the textbook entitled Polski Proces Karny w Zarysie (Polish Penal Process in Outline) from 1979, Professor Marszał (1984) in the book Zagadnienia Ogólne Procesu Karnego (General Issues of the Criminal Process) and Professor Andrzej Murzynowski (1985) in the book entitled Istota i Zasady Procesu Karnego (The Essence and Rules of the Criminal Trial) (Waltoś, 2011, p. XX).

Thought 4: About the Burden of Proof and the Obligation of Proving

The name proof is one of the most polysemous expressions in everyday language as well as in legal language and legal terminology (Cieślak, 1984, p. 412). Considerations regarding the terminology of evidence go beyond the scope of this study and are irrelevant to the thought of Professor Cieślak about the burden of proof and the obligation of proving. Here, there was going about proving the thesis put forward in the process.

Professor Cieślak in the monograph entitled Zagadnienia Dowodowe w Procesie Karnym (Evidence Issues in the Criminal Process) from 1955 signaled his concept of understanding the burden of proof and the
obligation of proving, different from the other one adopted then in the doctrine, thought of Professor Śliwiński from the textbook entitled Polski Proces Karny Przed Sądem Powszechnym. Zasady Ogólne (Polish Criminal Process Before a Common Court: General Rules), originally issued in the 1940s and resumed many a time. According to the concept of Professor Śliwiński, the burden of proof boils down to the question who takes the consequences of the lack of evidence or failure to provide evidence regarding the circumstances relevant to the settlement? (Śliwiński, 1959, p. 300). On the other hand, the obligation of proving burdens the court and the public prosecutor, who have the duty to prove their views on what is material truth, it does not burden the private prosecutor and the accused unless the law provides constitutes otherwise (Śliwiński, 1959, pp. 299-300, 302). Criticizing Professor Śliwiński in the mentioned monograph, Professor Cieślak paid attention to the insufficient distinction between the burden of proof and the obligation of proving. Even if the burden of proof any circumstances lies with the accused, the procedural authorities are still burdened with the obligation of proving (Waltoś, 2011, p. 137).

The exact own definition of the “burden of proof” and “obligation of proving” were made by Professor Cieślak in the textbook entitled Polska Procedura Karna. Podstawowe Założenia Teoretyczne (Polish Criminal Procedure: The Basic Theoretical Assumptions) and it was repeated in its next editions. According to Professor Marian Cieślak (1984), the burden of proof “is the necessity of proving a certain thesis in the process under pain of non-recognition—or at least the risk of non-recognition—by the decision-making procedural authority” (highlighting in the original) (pp. 346, 347). The burden of proof is not an obligation, but a procedural right that should be used for the purpose of carrying out specific procedural interests (Cieślak, 1984, p. 347). Professor Cieślak (1984, p. 348) divided the burden of proof into three groups:

1. the burden of proof in a general sense—is expressed in the imperative: “Try to prove your thesis because otherwise you will increase the chances of proving the opposing thesis, represented by your process opponent”,

2. the burden of proof in a material sense—is expressed in the imperative: “Try to prove your thesis because in case of the failure to provide evidence (by anyone) it will be rejected”,

3. the burden of proof in the formal sense—is expressed in the imperative: “Try to prove your thesis because if you do not prove it yourself with your action (or the action of your representative), no one else, especially the procedural authority, will be able to do this instead of you and your thesis will be rejected” (highlighting in the original) (Cieślak, 1984, p. 348).

To distinguish, according to Professor Cieślak (1984),

the obligation of proving is a legal obligation, established by law in the other interest than the self-interest of a bound person. In the process, procedural authorities have the obligation of proving in accordance with the rules of: accurate criminal reaction and material truth (...) There is also the obligation of proving—but limited only to the circumstances in favor of the accused—on the side of the defense counsel. (highlighting in the original) (pp. 352-353)

Although the terms of “the burden of proof” and “the obligation of proving” arouse controversy and are not understood uniformly in the doctrine, the idea of Professor Cieślak also received followers; hence it belongs to his school of science. The elaboration of Professor Cieślak is directly referred by Professor Waltoś and Professor Hofmanski (2013) in the textbook entitled Proces Karny. Zarys Systemu (Criminal Process. Outline of the System) (Waltoś & Hofmansi, 2013, pp. 249, 250). The duplication of the thought of Professor Cieślak
is not negated by that the authors confront the terminology given by him with the current legal status. The concept of Professor Cieślak correlated with the previous idea of Professor Śliwiński is also reproduced by Professor Skorupka (2017) in the textbook entitled *Proces karny (Criminal process)* (Skorupka, 2017, pp. 199-202).

**Thought 5: About Division the Grounds for the Detention**

Detention is one of the preventive measures, that is, instrument of coercion against the accused, aimed at securing the goals of the criminal process, and especially at preventing the accused from impeding the criminal process (Cieślak, 1984, p. 400). It relay on the deprivation of liberty of the accused (Cieślak, 1984, p. 401). The grounds for the detention are the circumstances determined by law, allowing its use (Cieślak, 1984, p. 402).

Professor Cieślak was the first scientists in the doctrine, who divided the grounds for the detention on general and specific. It was made in the article entitled “Areszt tymczasowy w świetle obecnego i w perspektywie przyszłego ustawodawstwa (Detention in the light of current and future legislation)” from 1954 (Waltoś, 2011, p. XVI). Professor Cieślak (1954) considered the topic of detention as very important because “detention is applied to the suspect, thus to a person who has not yet been proven to be guilty enough, but even to whom obligation to treat her or him as innocent exists (principle presumption of innocence)” (p. 746). The slightest rashness in its application, carelessness, false assessment jeopardize the interests of society, reduce the authority of the judiciary, hurt citizens, and violate the rule of law (Cieślak, 1954, p. 745).

In the mentioned article, Professor Cieślak described both groups of grounds for the detention and their relationship. The general ground relates to all preventive measures, *id est* safeguarding the proper conduct of process, including detention. It is a postulate of high probability that the accused has committed the offense she or he has been accused (Cieślak, 1954, p. 754). The specific grounds relate to only detention and include the fear of the defendant’s escape, fear of the chicanery and others inscribed in the process bills at the present time (Cieślak, 1954, p. 754). The law provides for situations when there is a presumption of fear of flight, that is, if the accused does not have a permanent place of residence in the country or if her or his identity cannot be established. Obviously, this presumption does not absolutely bind the procedural authority using detention; it has the opportunity to assess whether, despite such a typical situation, the fear of flight is real in a given case, and in the case of a positive answer—despite this whether arrests is in this case socially deliberate (Cieślak, 1954, pp. 754, 755). The fear of flight or chicanery must always be justified in the light of the collected evidence (Cieślak, 1954, p. 755). The mutual relation between the general ground and the specific grounds “is presented in such a way that in order for an arrest to be possible in a given case, there must be a general ground, and at least one of the special grounds” (Cieślak, 1954, p. 753). Professor Cieślak repeated these statements, adjusting them only to the current legal status, in subsequent editions of the textbook entitled *Polska Procedura Karna. Podstawowe Zalożenia Teoretyczne (Polish Criminal Procedure: The Basic Theoretical Assumptions)*.

Currently, the division of the grounds for the detention on a general ground and specific grounds in the criminal law doctrine is considered obvious in other scientific studies, what proves the great influence of the theoretical and legal thought of Professor Cieślak on other representatives of the doctrine and the fact that this thought belongs to the scientific school of Professor Cieślak. For example, the textbook edited by Professor Skorupka (2017) entitled *Proces Karny (Criminal Process)* stated that

the positive general premise of preventive measures is the evidence in the process which indicate the high probability of that the accused has committed the offense she or he has been accused and the special premise—fear (risk) of impeding
The thought of Professor Cieślak was not disconfirmed through that the authors of the textbook edited by Professor Skorupka applied the division of the grounds for the detention to all preventive measures, one of which is the detention. Professor Waltoś and Professor Hofmanski (2013) wrote similarly in the textbook entitled *Proces Karny. Zarys Systemu* (*Criminal Process: Outline of the System*). Earlier, the division of the grounds for the detention had been took over by Professor Marszał (1992, p. 269) in the textbook entitled *Proces Karny* (*Criminal Process*).

**Conclusions**

Professor Cieślak (1984) was sensitive to people and regardless of prevailing political relations he always tried to interpret criminal procedural law in the spirit of humanism, which he understood as “a directive that all human activity should serve human good and always take into account respect dignity and human personality”, resulting from the fact that “the highest value is human” (highlighting in the original) (p. 209). It caused that he found scientific problems in many, if not all, areas of criminal process, but, in the article, were chosen thoughts took over by other scientists because they form the scientific school of philosophical and legal thought of Professor Cieślak.

The article showed that Professor Cieślak is the founder of the scientific school of philosophical and legal thought in criminal proceedings and five thoughts belonging to this school, followed in the doctrine by subsequent scientists and recognized by the author of this study as the most important. The first thought was that the subject of the criminal process is legal liability. The perpetrator’s deed is tried in criminal process, but only if the procedural authorities can hold somebody responsible for it. The second thought concerned the criteria for the identity of a deed. It is present not only in theory, but also in the judicature (Cieślak & Steinborn, 2013). The third thought is collectively name all subjects of criminal process as participants in the process. This is a very useful term that allows you to skip a separate specifying of various subjects of the criminal process if you want to talk about everyone. The fourth thought concerned the burden of proof and the obligation of proving. Observance of the rules of evidence allows to deliberate and rational search for the truth in the criminal process (Cieślak & Steinborn, 2013) because the facts underlying the judgment are determined on the basis of evidence. The fifth thought was the division of the grounds for the detention on general and specific. In the case of a detention, Professor Cieślak saw the problem of deprivation of liberty without a valid criminal conviction, which means that the detention should be clearly limited by the law (Cieślak & Steinborn, 2013).

Professor Cieślak was one of the greatest lawyers and scientists. His definitions were accurate and also short, which was why they were so easy to accept by the next researchers. His observations were penetrating as well as theses and divisions were very mature. He reliably, precisely and logically explained his views. He wrote straight about difficult issues. He believed that the meaning of terms and their classification are of fundamental importance for the results of the analysis of individual theoretical issues and impact considerably on the practice of applying the law (Cieślak, 1959, p. 333); therefore he devoted so much attention to them. At the same time, he warned others and avoided building too many definitions of a given term, because it only increases confusion and disqualifies the theory in the eyes of its recipients (Cieślak, 1959, p. 333).

Described features of his studies caused that he created new views in theory and in the practice of law. He regretted the fact that the acceptance of his views in other countries or the international pursuit of uniformity of
views was made difficult for criminal process by strong rooting of criminal process in the traditions of a given state (Cieślak & Steinborn, 2013).

Former associate of Professor Cieślak, Professor Brunon Holyst mentions him as a scholar with an outstanding personality. He wrote works that influence the shaping of ideas about law in theory and practice to this day (Cieślak & Steinborn, 2013). It should be added that, despite the change in law, the theories of Professor Cieślak remain valid today, seem even universal.

References
Cieślak, M. (1954, Grudzień). Areszt tymczasowy w świetle obecnego i w perspektywie przyszłego ustawodawstwa (Detention in the light of current and future legislation). Państwo i Prawo, 745-771.
Cieślak, M. (1959, Sierpień-Wrzesień). O pojęciu przedmiotu procesu karnego i w sprawie tzw. “podstawy procesu” (About the term of the subject of the criminal process and in the case of so called “the basics of the process”). Państwo i Prawo, 333-341.
Cieślak, M. (1960, Luty). Glosa do wyroku z 14 II 1959 R., V K 134/59 (Gloss to the verdict from 14 II 1959 R., V K 134/59). Państwo i Prawo, 379-384.
Cieślak, M. (1984). Polska procedura karna. Podstawowe założenia teoretyczne (Polish criminal procedure: The basic theoretical assumptions). Warszawa: Państwowe Wydawnictwo Naukowe.
Cieślak, W., & Steinborn, S. (2013). Profesor Marian Cieślak—Osoba, dzieło, kontynuacje (Professor Marian Cieślak—Person, work, continuation). Warszawa: Wolters Kluwer.
Marszał, K. (1992). Proces karny (Criminal process). Katowice: Volumen.
Skorupka, J. (2017). Proces karny (Criminal process). Warszawa: Wolters Kluwer.
Śliwiński, S. (1959). Polski proces karny przed sądem powszechnym. Zasady ogólne (Polish criminal process before a common court. General rules). Warszawa: Państwowe Wydawnictwo Naukowe.
Waltoś, S. (2011). Marian Cieślak. Dzieła wybrane, tom I, Zagadnienia dowodowe w procesie karnym (Marian Cieślak. Selected works, volume I, Evidence issues in the criminal process). Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
Waltoś, S., & Hofmański, P. (2013). Proces karny. Zarys systemu (Criminal process: Outline of the system). Warszawa: Lexis Nexis.