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**Questioning according to art. 185a–185d of the rules of criminal
procedure. Between protection of a child and the right to defence.**

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The subject of the doctoral thesis is the problem of the relationship between two protected values within special modes of questioning minors from art. 185a–d of the rules of criminal procedure, namely, the good of the child and the right to defence.

Deliberations were carried out in order to determine whether art. 185a–d of the rules of criminal procedure actually strengthen the protection of children in a trial, whether the protection resulting from these provisions is sufficient or whether it is limited – and if so, in what manner fundamental to the implementation of the idea of a fair trial and the procedural rights of defendants constituting the right to defence. An additional issue, but equally important, consisted of establishing whether potential restrictions in the area of procedural guarantees for the defendants were/are reasonable/justified in terms of both purpose and scope.

With the help of these questions as formulated, further efforts were made to determine whether the standards of art. 185a–d of the rules of criminal procedure in fact lead to conflict/competition between values such as the good/the protection of a child and the right to defence, as well as whether, on the basis of statutory solutions, it is possible to determine whether, in light of art. 185a–d of the rules of criminal procedure, one of the conflicting values, namely, the good of a child and the right to defence, is always to be regarded as possessing unconditional supremacy over the other. Supplementary deliberations were conducted to help determine whether such supremacy is permanent and independent of the procedural circumstances.

The search for answers to the questions thus posed was carried out in three research areas. In each of them, analyses were conducted regarding the nature of the collision/competition of values and the principles of their resolution, in order to subsequently refer to general comments (albeit specific within a given sphere) to evaluate the correctness of solutions adopted in art. 185a–d of the rules of criminal procedure.

In the first area, in which it was assumed that the criminal process is a certain theoretical vision, including general theories and views attributed mainly to legislators, art. 185a–d of the rules of criminal procedure was studied in relation to the postulates of the theory and philosophy of law and constitutional law. In the second, in which this process was regarded as an existing and binding ideal model of criminal proceedings, the regulations contained in art. 185a–d of the rules of criminal procedure were compared with the assumptions of three ideal models of criminal proceedings: conventional, those of the European Union, and procedural. In the third, referring to the actual functioning of a criminal trial, an analysis was conducted concerning the way the norms of art. 185a–d of the rules of criminal procedure are used by courts in specific criminal proceedings.

In this way, several assessments were carried out, referring to various contexts of the functioning of the institutions of art. 185a–d of the rules of criminal procedure in terms of competition of the values in question, enabling the formulation of answers to the questions posed at the beginning of the paper and the elaboration of final conclusions.

It follows from the deliberations conducted here that undoubtedly, by introducing protective modes of questioning children, the value of ‘the good of the child’ can be defined as a protected value, the ‘right to defence’ as a limited value. However, it was found that in art. 185a–d of the rules of criminal procedure there was no intention that either of the competing values was to be regarded as absolutely superior to the other. To the extent that the legislators’ goal was to strengthen the status of a minor as witness, this was not intended to be accomplished at the cost of eliminating the right to defence. Through analysis of the regulations of art. 185a–d of the rules of criminal procedure, including reference to variables from the highlighted research areas, it was shown that each of these values is characterised by certain limitations respecting the implementation of the other, and that no value is or can be regarded as absolutely ‘supreme’.

The present research has additionally made it possible to demonstrate the shortcomings of the current regulations and to formulate conclusions *de lege ferenda*.

The dissertation consists of eight chapters, including the introduction and conclusion.

In Chapter 1, an introductory chapter, the main assumptions and goals of the dissertation are presented.

Chapter 2 explains the key concepts involved in the present deliberations, such as *child*, *minor*, and *juvenile*, indicating the differences operating within the scope of their meanings in the sphere of colloquial and legal language. In addition, the roles of a child appearing in a criminal trial are described. The subject of the thesis also required the presentation of the meaning of the terms related to the perpetrator of a prohibited act, referred to in the regulations as *the accused*, *the suspect*, or *the suspected individual*.

Chapter 3 analyses the most important international regulations regarding the competition of the discussed values, as well as those influencing the protection of minors taking part in criminal trials and the exercise of rights by defendants.

Chapter 4 describes the historical development of the institution of ‘safe questioning’ of children within Polish penal procedures. It presents the legal status applicable to the procedural protection of children at the time of the introduction and during the first years of operation of the 1997 Code of Criminal Procedure. Next, the most important amendments to these regulations, from 2003, 2005, and 2013, are described up to the present.

The next three chapters of the paper, 5, 6 and 7, are devoted to consideration of the competition between values, i.e. between the good of the child in a criminal trial and the implementation of the procedural rights of the accused in the light of the regulations of art. 185a–d of the rules of criminal procedure. Chapter 5 refers to the abstract, i.e. scientific and constitutional, sphere; Chapter 6 examines the paper's titular issue within the sphere of ideal procedural models; Chapter 7 deals with the issue of the competition of protected values in the field of the application of law within specific criminal proceedings, and includes the results of the author's own research and analysis of court files.

Finally, the conclusions from the highlighted research perspectives are presented, indicating the relationship of the protected values. The shortcomings of the current regulations are discussed, including the formulation of postulates *de lege lata*.

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