

Białystok, 30. September 2016

**Autopaper**

presenting a description of the academic achievements in the meaning of Article 18a(2) of the Act of 14 March 2003 on Academic Degrees and Academic Title and Degrees and Title in Art (Dz. U. Nr 65, item. 595, as amended in Dz. U. of 2005 nr 164, item. 1365, in Dz. U. of 2011 Nr 84, item. 455 and in Dz. U. of 2014, item. 1198)

**I. Name:**

Ewa Kowalewska – Borys

**II. Education, degrees and diplomas**

- Master's degree in law (summa cum laude), 1995, University of Warsaw Faculty of Law and Administration, a branch in Białystok, the title of Master's thesis: Fault as a problem of criminal law, supervisor: prof. zw. dr hab. Piotr Hofmański and diploma honorificum Rector et Senatus Universitatis Studiorum Varsoviensis in 1995.

- degree Magister der Rechtsvergleichung (Magister iuris comparativi) 1998, Rheinische Friedrich – Wilhelms – Universität Bonn, Rechts- und Staatswissenschaftliche Fakultät, the title of Master's thesis: Der deutsche und polnische Kronzeuge, supervisor: prof. dr Ingeborg Puppe

- degree: Doctor of Laws, 2003, University of Białystok, the title of the doctoral dissertation: A key witness in a Polish criminal trial. Guarantee of detecting the truth or an instrument for proving the guilt of criminals., supervisor: prof. zw. dr hab. Andrzej Bulsiewicz, reviewers: prof. zw. dr hab. Edward Skrętowicz, prof. zw. dr hab. Piotr Hofmański

### **III. Information about a history of my employment in research units**

- from 1 October 1996 to 30 September 2003 - assistant at the Faculty of Law of the University of Białystok (on maternity leave from 20 December 2000 to 18 June 2001)

- from 1 October 2003 adjunct lecturer at the Faculty of Law in the University of Białystok (on maternity leave from 9 September 2005 to 12 January 2006)

### **IV. Achievement referred to in art.18a(1) of the Act of 14 March 2003 on academic degrees and academic title and degrees and title in art (Dz. U. nr 65, item. 595, as amended in Dz. U. of 2005 r. Nr 164, item 1365, in Dz. U. of 2011 nr 84, item 455 and in Dz. U. of 2014, item 1198)**

As an achievement forming the basis for applying for the conferment of the academic degree of doktor habilitowany I indicate the monograph: Criminal aspects of journalistic inquiry published by Publishing House of University of Białystok, Białystok 2015, 2016, (ISBN 978-83-7431-481-7), pp. 393

My field of interest and scientific research, contained primarily in the monograph indicated as a scientific achievement, is a confluence of conflicting principles and interests of investigative journalism and the rights and freedoms of an individual from the perspective of criminal law (in the broader sense). This essential and immanent collision investigative journalism, ie. "Tracking crime, corruption and abuse of power in the name of the public good - with the knowledge and consent of his superiors" and the sphere of privacy and intimacy unit is characteristic, especially for modern times. What is closely related to the issue of the pointed collision are the limits of the so-called freedom of investigative journalism, that are set by specific legal regulations. The considerations contained in the monograph indicated above were preceded by my previous research presented for the first time in the form of a lecture at the conference "The criminal justice system and the media", which was held at the Faculty of Law, University of Białystok on 16-18 May 2007, and then included in the article "A few comments on a journalistic investigation" in the publication "The criminal justice system and the media", ed. Kulesza C., Temida Białystok, 2009. In addition, inter alia, in the article "Investigative journalism as a new form of journalism in the information society" in the BSP, 2010.

**Discussion on the scientific objective of the above-mentioned work and the results achieved, together with a discussion on their possible use.**

The main scientific objective of my research was to identify practical problems arising in a work of an investigative journalist, which can and should be solved by the dogma of the criminal law, as well as the providing the term "the criminal law boundaries of investigative journalism" with a relevant content.

There is no doubt that we are living nowadays in the era of the fourth power – the rule of media or civilization of the image. Thanks its basic function, which is undoubtedly to inform the public, mass media, in a conscious and a direct way, influence the shaping of civil society. Their power is so great that it shapes the society and the politics. *Instrumentis communicatonis socialis* fulfill many important functions, especially the function of the controlling the three powers: legislative, executive and judicial. Investigative journalists look for socially important topics, gather information and evidence, and they make the results of investigations available to the public. During collecting information, evidence and materials they enter into the areas that are legally protected (usually in the interests of the private, inaccessible to the public).

Discussion undertaken so far in the literature have focused rather on selected issues or aspects, however no monograph on such a topic was created. There are at least a few reasons for this state of affairs. First of all, the nature of work of an investigative journalist and methodology of his activities, are mostly kept in secret. And an analysis of the results of journalistic inquiry, based on the final press material, therefore from obtaining an initial information, the topic, which is worth being taken up, from an action under the journalistic inquiry, to the final result, therefore the press material (leaving the problemating aspects of the final result, ie press publication to a separate analysing) is complicated, because the journalistic findings and conclusions are sometimes unconvincing or even erroneous and false, and for the hero of a journalistic publication - sometimes disastrous. From the perspective of a lawyer, in turn, it was also uneasy to get aware of the principles and methods of journalists' actions, including in particular, investigative reporters and getting to the journalist circles. What was also necessary was the knowledge of the structure and the characteristics of the media market in Poland (including the ratio between public and commercial media and the participation of the foreign capital), political principles of the functioning of the media, the issues of the so-called journalistic independence, the obligation to objectivity, the obligation to present a lineup, conscience clause, etc. Therefore,

of great importance was the study of the non-legal sources of information, from which stemmed a philosophy of investigative journalism, in which, in fact, compliance with the law is on the second plan.

Justification of the problematic issues, delineated by the subject of a monograph, especially in the areas so sensitive for a democratic society like freedom of speech and the right to privacy in the broader results from the remarks made so far, and above all, from the lack of a comprehensive study, the significance of the identified topics, variability and unpredictability of the assessments, by which, in the processes of journalists, the judicial authorities are guided during the assessment of the criteria on which the final criminal liability depends eg. for compelling or defamatory statements; as well as from the need to combine strictly scientific considerations with one of the most interesting and controversial phenomena which is the investigative journalism.

Investigative journalism is a special type of the fourth power, as it constitutes a significant and objective gauge of the condition of a given democratic system. For its development it needs for specific conditions which appeared in Poland after 1989, when there was a change of the political system into the parliamentary democracy and a return to a market economy. Investigative journalism, which leads to the disclosure of any pathologies of public life and informing the public about them, cannot develop during the era of the dictatorship, when citizens and forms of their participation in public life are totally dependent on power and are its instruments. In Poland, the communist government did not allow to reveal the truth about the mechanisms of the totalitarian power and its abuses, deviations and nepotism, poverty, unemployment and common crimes. The rights and freedoms of citizens were violated and awareness subjected to indoctrination and propaganda. In the incapacitated and dependent on the communist regime media there was a state censorship. Whereas, under the system of democracy, journalism especially investigative journalism, is primarily a form of an independent and social control of the power. It has its important place and a role to play. It is, obviously, a truism to say that the law enforcement and the judiciary uphold the rule of law in Poland. It is impossible, however, not to notice the role of investigative journalism in exposing crimes and scandals. Some, not to say most of the scandals would have never saw the light of the day but for the efforts of investigative journalists. The reliable investigative journalism is a tedious, dangerous, frustrating and expensive, but the end result is - the most frequently spectacular and measurably having effect on a so-called. economic calculation of a particular publisher.

Investigative journalists are endowed by society with credibility and authority, and their work is perceived as an extremely efficient and reliable. Using these attributes they can effectively and quickly explain the circumstances of a particular case, make the original findings, reach out to the relevant sources of evidence and gather other important evidence and give the results of their own journalistic investigations to the public. It should be noted, however, that apart from the credibility and authority, what is essential while collecting and using press materials is a careful and reliable action of an investigative journalist whose aim is to reach the truth and the defense of a socially legitimate interest. The unreliability and carelessness, lack of journalistic workshop and ignorance of the law (sic) are pathogenic and erosive for investigative journalism. Paradoxically, investigative journalism has a significant impact on the condition of investigative journalism (sic), ie the standards and the way of conducting the investigation and quality of the investigative materials. An impressive example of this opinion is receiving the prestigious award from the Stefan Batory Foundation in the category of investigative journalism for "Tylko ryba nie bierze" (*"Only fish does not take" - in Polish language 'today fish take' means that 'it is easy to fish today', whereas 'to take' means by implication 'to take money'*) for the best investigative material concerning corruption. The award was funded by the American Embassy, the Stefan Batory Foundation and the Rural Development Foundation. The aim of this competition was to support the development of investigative journalism in Poland. The jury awarding the prize, took into account the professionalism and the reliability in the approach to the subject. In the communication of the foundation no cause of the end of the competition was mentioned, but the photo from the website of the winning articles indicates that the investigative materials contained false information and investigative journalists have not retained the highest standards of their work. The negative "heroes" of their publications then won all the lawsuits against investigative journalists.

Therefore, the scientific goal of this dissertation is an analysis of key criminal law issues related to the journalistic investigation. Certain legal solutions never work in a void, but always in a specific reality which has its influence on them. In the case of such delineated issues what should be avoided are solutions that are particularly highly vulnerable to variability of ratings, depending also on the existing political situation, and these or other preferences of specific political circles in power, or from a certain capital, or even a specific program line. The choice of the subject matter of the main scientific achievement in this field was dictated also in terms of a pragmatic nature, which include both significant

problems of interpretation on the basis of the existing normative regulations, as well as the unsatisfactory state of compliance with operating rules, and habits that give rise to uncertainties, and practices and trends in the sphere of public media and the closely related issue of the potential risks for both the freedom of the press and other mass media, as well as the expressed in art. 47 of the Constitution of Poland everyone's right to legal protection of the private and family life, honour and good reputation and to make decisions about one's personal life. It cannot be ignored that, especially in the case of the problematic aspects of the investigative journalism, it can be clearly outlined that the interdependence of entities from which the position of one determines the position of the other, and the freedom and rights of one entity are the consequence of other entity's duties. It is therefore about a certain subsidiarity, which will guarantee a balance and a harmonious development, and will provide, on the one hand, the realization of freedom of speech in the press, on the other hand - individuals will be provided space for the development of their privacy. It is because a personally tinged protection of the interests of the individuals and their common good, is closely interwoven with the protection of the interests of the society and the common good, through the activities of investigative journalists.

Therefore, the main objective of the work in the form of evaluating the existing normative solutions in the field of both criminal law determinants affecting the so-called. journalistic inquiry, and its legal boundaries, was conditional on the adoption of the assumption that between the activities of investigative journalists and the criminal law protection of certain rights and freedoms, and the normative shape of the criminal liability of an investigative journalist for the infringement there should exist a certain covariance relationship, involving both the impact of normative solutions of the criminal law on the activities of investigative journalists (eg. criminal liability of a journalist for defamation, violation of domestic peace, faking of intellectual documents), as well as practices, habits and trends in the range of use of of specific solutions and law instruments by the investigative journalists (eg. a secret of anonymity, problems of journalist, private collection of evidence), on the other hand, resulting in the assessment of journalistic behaviour determined by the judiciary. The objective of the work obviously affects the research thesis: the existing criminal law solutions do not define sufficiently the limits of the activities of investigative journalists, especially investigative journalism, whereas the standpoint of the Polish courts is not uniform in this regard. Proposals of strict statutory regulation of journalistic investigations are contr-effective.

Having been given the above assumptions, the following main research problems were made: 1. what are the determinants of the criminal law affecting the so-called. journalist inquiry, 2. what boundaries for journalistic inquiries delimit the existing rules of criminal law, 3. do conducting the so-called journalist inquiry have an impact in terms of possible liability of an investigative journalist 4. is necessary a legal regulation of a so-called journalist contratype and 5 is a judicial practice concerning the decision not to initiate or to redempt of criminal trials against journalists on the principle of insignificance social harm valid? The consequences of the purpose and the research thesis are both a construction of this dissertation, and an applied research methodology. The work consists of five parts, containing arguments concerning: 1. the general law determinants of a journalist inquiry, 2. determinants of certain procedural rules of the material press law, 3. Determinants of certain procedural provisions of the press law, 4. borders of a journalist inquiry required by certain material criminal law and 5. borders of a journalist inquiry required by certain criminal law process.

Juridical considerations are conducted on the basis of the dogma of law, as well as on the practice of law and the law-making policy. It should also be mentioned that carrying out analyzes, taking into account sociological issues is one of the factors determining the process of rational law-making. Therefore, it is also significant that what has an influence on the compliance with the law (understood as the behavioral effectiveness) are various factors, which are not always compatible with the indications resulting from the dogmatic analysis. In the whole thesis, especially in the first chapter, there are aspects of comparative. Due to the fact that the investigative journalism of Great Britain and the United States has the richest tradition, aspects of comparative concern those countries. As a basic research method the method of non-reactive testings was adopted, ie. the analysis of the content and existing information, the source of which are primarily: literature, legal solutions in the area of the research, as well as the official press materials, after-conference publications, criteria and justifications of the prizes in the category of investigative journalism, KRRiT messages and opinions and statements of journalistic circles, including particular journalists. The analysis also covered the objective decisions of the Constitutional Tribunal, the Supreme Court and courts of law, as well as the European Court of Human Rights. The implementation of the aims set within the scope of the objective considerations had required to carry out specific research publications and press materials, which are partial or the end result of the journalistic inquiries (the partial result is usually a prediction of the sensational

reportage). For the reliability of the research what was also taken into account were the further fates of the main "heroes" of the investigative publications. In addition, to the research set up in such a way it was important to establish the methods and manners of conducting the journalist inquiry, the ethical dimensions of investigative journalism, and the operating methods, practices and customs in particular, as well as the properties / qualities of the investigative articles, which in turn contributes to the condition of investigative journalism in Poland. The acquisition of this type of information was meant to, inter alia, verify and confront commonly existing opinions in the range of contemporary possibilities and at the same time of the limitations in investigating journalist inquiries. It was not without significance for the discussed topic to determine the social and legal consequences, which had a particularly acute and intense dimension for the main characters of the journalist inquiries. The objective studies let also to formulate the remarks *de lege ferenda*. In these considerations the deduction was taken as the basic type of the conclusion, and the alternative induction.

In terms of the results and conclusions, first of all, it should be stated that understanding the essence of investigative journalism and the specificity of the work of investigative journalists was of fundamental importance. Another important finding was that the condition of investigative journalism is closely related to the condition of the country in which it operates and to the quality of its democracy and the level of development of the nation. The adopted solutions, legal instruments and ethical assumptions, in fact, have significant implications for the quality of investigative journalism. It also turned out that the so-called branch of the press law is a completely neglected area of law in Poland. Despite many outstanding professionals, judicial decisions and repeated discussions on this subject Polish legislator appears to be extremely dilatory and reluctant. Both the journalist and legal communities agree that the still unresolved ethical and legal problems with which the Polish journalism is faced have a negative impact and also heighten the aberration of journalism, especially investigative journalism and reduce the authority of the judiciary. This is confirmed by the results of the public opinion polls, in which the profession of journalists belongs to those that have been particularly affected by the collapse of ethical standards. There is a widespread belief that today's journalists either pretend not to know that they violate the law, or they really do not know that they violate it and use some legally unacceptable methods of gathering information. Such proceeding is detrimental to both the journalism and the legal culture in Poland. Unanimity of both communities, however,



relates to the settlement of the questionable issues, "the best in the new Press Law." On the other hand, the principle, absolutely cardinal difference concerns the controversial methods of investigative journalism. Investigative journalists declare that it does not seem possible to do the „reliable” investigative journalism without (in addition to the legal methods) using controversial methods of gathering information. The lawyers are opposed to such an expiatory statutory regulations. Undoubtedly, however, the lack of objective law regulations, an in-depth scientific discussion, specific professional qualifications, as well as the heterogeneous judicial decisions (particularly in the field of investigative journalism) cause that is the standards of investigative journalism did not develop in Poland. In contrast, the discrepancy between the legal regulations and the declared ethical principles (in particular the Code of SDP) is very clearly visible.

The essence of investigative journalism is a long, reliable and comprehensive investigation, of which the results later become public. Whereas the subject of the investigative journalism are processes and events taking place in politics and the economy and are important from the point of view of the public interest and take place in the public. In a democratic state ruled by law investigative journalists play a very important role of a watchdog. Their primary source of information are so-called. whistleblowers (the most popular one was Edward Snowden). Due to the ongoing and contemporary processes of globalization the investigative journalists from different countries are keen to cooperate in order to reveal the various scandals at the international level and domestic practices that threaten countries' democracies. As an example, the so-called case of spywares PRISM should be noted, as well as Tempora, or the case Offshore-Leaks (concerning corporate databases, including financial relationships with customers, two world leaders in the creation and management of trust funds, ie. Portcullis Trustnet and Commonwealth Trust Limited in the financial centres located on the "platforms, away from the shore" so-called offshore), at which worked more than 86 journalists from 38 newspapers, radio and television stations from 46 countries. In this case, all the activities and projects of the investigative journalists were coordinated by the International Consortium of Investigative Journalists. This collaboration of the investigative journalists from different countries demonstrates commonality of purposes, working methods and rules of conduct.

In the Polish journalistic community there is a common opinion that investigative journalism consists of: own investigation of the author / authors of the texts; disclosure of what was to remain hidden; the action for the public good, consisting of tracking down

crime; the use of classified methods of gathering information (a hidden camera and a hidden microphone, wiretapping, dressing up, etc.); the use of anonymous sources of information; a repair of the reality as a result of a journalist'/journalists' work. In Poland investigative journalists and their journalist inquiries are protected at the constitutional level, by both the regulation of Article 14 in the Constitution of Poland, according to which the Republic of Poland shall ensure freedom of the press and other mass media, as well as the regulation of Article 54, according to which everyone shall be provided with the freedom to express opinions and to acquire and disseminate information (para. 1). Preventive censorship of the means of social communication and the licensing of the press shall be prohibited (para. 2). It should be noted that the constitution, apart from journalists, protects also individuals who cooperate while doing journalist inquiry, especially the authors of a press release, a letter to the editor or other material of this nature, as well as people providing the information published or submitted for publication. The abovementioned constitutional provisions are instantiated in the Act of 26 January 1984 - Press Law, which regulates in a detail way the general principles, rights and responsibilities of the journalists, The Press Council, the organization of press activity, rectification, messages and announcements, legal responsibility and the rules of conduct in the press matters. In this Act there is a beginning of "special limits of" freedom of journalistic inquiries. On the other hand, "non-special limits" of journalistic inquiries are in the substantive and procedural criminal law. As an example, the art. 193 of CCP. should be indicated, according to which the journalist must not invade someone else's house, apartment, premises, building or fenced area or not to leave such a place, contrary to the request of the entitled person; or art. 180 of CCP., according to which the journalist obliged to keep in secret the things connected with his or her profession cannot refuse to testify in the circumstances to which this obligation extends, if the court, for the sake of justice, releases him or her from the obligation to keep the secret. It should be noted, however, that the criminal laws do not define the permanent borders for the investigative journalists. The constitutional provisions indicated above, which are an important interpretive aid in the case of a collision of the legal norms, have an impact on it,. In the relevant part, the fundamental question is the possibility of expiation of an investigative journalist in a situation when he violates the substantive and criminal law rules. It is therefore clear that freedom of the press, including the right of a journalist to acquire and disseminate information, cannot displace rights of an individual, especially the right to privacy and intimacy and it cannot violate personal rights. However, it is not so obvious how to proceed in a case of a collision of freedom of the press and the rights of individuals

who feel threatened by the media. In the Polish judicial practice a behaviour of an investigative journalist is usually justified on the basis of an insignificant social noxiousness of an act. While the institution of an extreme state of emergency is not applicable in the matters of investigative journalists, although in some cases its conditions were met.

A good example of such a collision of values is a case of a reporter Andy Gęšina-Torres, who was convicted for the falsification of documents - Art. 270 § 1 of CCP and Article. 12 of CCP and for making a false statement - art. 233 § 1 of CCP. The investigative journalist Andy Gęšina-Torres, realizing a journalistic provocation, fulfilled by his behaviour the elements of both crimes. The District Court in Białystok during the judgement dated November 20, 2013 (Act XV K 74/13) found E. Gesine-Torres guilty of the charges against him, but refrained from the punishment, limiting to the ruling a penal measure of paying 2000 PLN to the Fund for supporting to the victims and post-penitentiary aid.

The assumption adopted at this work that between the activities of investigative journalists and the criminal law protection of certain rights and freedoms, and the normative shape of the criminal liability of an investigative journalist for the infringement there should be a certain covariance relationship, involving both the impact of normative solutions of the criminal law on the activities of the investigative journalists and practices, habits and trends in the use of specific solutions and legal instruments by the investigative journalists; and on the other hand, resulting in the assessment of journalistic behaviours made by the judiciary, has been only partially positively verified. Uneven judicial practice, the lack of clear standards of investigative journalism and different from the right ethical principles result in a deformation of investigative journalism and a caricature practice. The investigative journalists do not have a sufficient awareness of the limits which are set by the criminal law solutions adopted by the Polish legislator. In turn, the divergence of judicial decisions in the processes of journalists is an additional destabilizing factor. These findings are also consistent with the assessment of the existing normative solutions in the field of criminal law in the broad sense and the press law. The thesis adopted at work that the current legal solutions (the media law and the criminal law) do not define sufficiently the limits of the activities of the investigative journalists, especially of the journalistic inquiry, and that the standpoint of the Polish courts in this field is rather eclectic, has unfortunately been confirmed. In contrast, the thesis that the proposal of a strict statutory rationing of journalistic inquiries is contr-effective, was only partially positively verified.

Criminal law clearly determines the journalistic inquiry, by setting certain limits, which are widely acceptable, and thus defining the possibility of an investigative reporter. The legislature protects the fundamental social values by criminal penalties. It therefore fulfills the protecting function towards both individuals and society as a whole, not only from journalists violating social norms prohibited by criminal law. The boundaries for investigative reporters are essentially the same as for every citizen. The freedom of an investigative journalist ends where begins the freedom of another man. On the other hand, his or her journalistic investigating has a patchy impact on his criminal responsibility. It can result in discontinuance of a criminal proceeding due to insignificant social noxiousness of a journalistic act and his lack of criminal responsibility, while other time it can cause the prosecution due to the misleading of a court and instrumental usage of it, for example as a result of false testimony during a case. It should be noted that the judicial practice concerning not initiating or closing criminal cases against journalists on the basis of insignificance of social noxiousness is not always correct. Whereas the research problem concerning the need for legal regulation of the so-called contratype journalism seems to be absolutely central issue for the consideration related to the criminal boundaries of investigative journalism. The current journalistic and judiciary practice indicate that such a regulation is necessary.

Freedom of the press and freedom of speech are constituting for the modern democratic state of law. The conclusions presented in the monograph and the proposals of the solutions indicate that there is an urgent need for a discussion on the legal limits of the Polish investigative journalism. Perhaps this is a discussion about the possibility and the scope of the standards limiting. Generally speaking, however, the whole discussion can be reduced to a question concerning the crucial issue, namely, to what extent the legislature can limit the freedom of the press in the interest of the rights of an individual and law enforcement agencies. What remains is to hope that all these positive and negative voices in this discussion will be included in order to create a balanced statutory regulation, which will satisfy not only the journalistic community. As, on the one hand, the mass media tend to be for too expansionary for the individual; on the other hand, they also seem to be irreplaceable.

## V. Other achievements of scientific research and scientific activity

### 5.1. Other areas of scientific interest and achievements in this field

In addition to the above-mentioned current research, which are the criminal law aspects of investigative journalism, **my first research area is concentrated in the vast majority on the issues classified as the study of criminal procedural law.** In this field of my research I indicate 18 published works, including 1 monograph, 1 collective work (co-editors), 12 articles in scientific journals and 4 co-editing chapters in collective works:

1. E. Kowalewska-Borys, The crown witness from a dogmatic perspective, Publisher Zakamycze, Cracow 2004, p. 300
2. E. Kowalewska-Borys, The crown witness in the light of the principle of material truth, (in :) Current problems in the criminal process and its effectiveness, commemorative book of Professor Andrzej Bulsiewicz, red. A. Marek, Publisher TNOiK, Toruń 2004, p. 179-189
3. E. Kowalewska-Borys, Procedural sanctions for the infringement of the accused's obligation to participate in the trial, (w:) Legal sanctions: theoretical and practical aspects in Poland and the Czech Republic, red. M. Popławski i Dana Šramková, Publisher Masarykova univerzita, Brno/Białystok 2008, p 288-292
4. E. Kowalewska-Borys, Protection of an immovable monument under art. 108 of the act on protection of monuments and care for monuments, (w:) Real estate in Czech and Polish law, red. G. Liszewski i Michał Radvan, Publisher Temida, Białystok 2008, p. 213-218
5. E. Kowalewska-Borys, About the legal possibility of admissibility of torture in Polish criminal law (in :) The practical elements of the fight against organized crime and terrorism. Modern technologies and operational work, ed. L. Paprocki i Z. Rau, Oficyna Wolters Kluwer business, Warszawa 2009, p. 493-505
6. E. Kowalewska-Borys, Considerations around the issue of crimes against the Polish Nation - The case of General Fieldorf "Nil", Administracja Publiczna. Studia Krajowe i międzynarodowe 2009, nr 1, p. 72-77
7. E. Kowalewska-Borys, Evidence preclusion in a criminal trial on the example of art. 170 § 1 point 5 of the Code of Criminal Procedure (in:) Time in law, red. C. Kosikowski, BSP 2010, z. 7, p. 298-308

8. E. Kowalewska-Borys, U. Drozdowska, Instruments of legal protection of medical records (in:) *Medical Records*, ed. U. Drozdowska, Wydawnictwo Cegedim, Warszawa 2011, p. 141-194
9. E. Kowalewska-Borys, W. Wojtal, Sharing, storing and destruction of medical records, (in:) *Medical Records*, ed. U. Drozdowska, Wydawnictwo Cegedim, Warszawa 2011, p. 51-107
10. T. Mróz, E. Czech, E. Kowalewska-Borys, Liability in Environmental Protection Regulations – Outline of the Issue in Polish Law. Part one and two, (w:) *Polish Yearbook of Environmental Law*, ed. B. Rakoczy, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2011, p. 19-32
11. D. Ćwikowski, E. Kowalewska-Borys, G. Szczuciński, Code-external regulations concerning the exploration and protection of assets forfeited, (in:) *Forfeiture of the objects and the proceeds of crime*, ed. E. Guzik-Makaruk, Publisher Wolters Kluwer business, Warszawa 2012, p. 282-348
12. E. Kowalewska-Borys, The rights of a suspected person granted an immunity in the interpretation of the supreme court – a critical review, „*Studies in Logics, Grammar and Rhetoric*”, 2012, vol. 31 (44), s. 113-127 (the magazine is on the list ERIH)
13. E. Kowalewska-Borys, Axiological importance of the principle of material truth in the Polish model of the criminal trial, (in :) *The concept of the place and importance of truth in the Polish criminal trial. The materials of the Wroclove Criminal Seminar* , ed. K. Kremens i J. Skorupka, Publisher Oficyna Prawnicza, Wrocław 2013, p. 113-122
14. E. Kowalewska-Borys, A. Michałowska, Methodology of preparation of a proceeding in cases related to smuggling crimes, (in:) *The fight against smuggling. Collection of good practices - different perspectives - a common goal*, ed. E. Pływaczewski, E. Kowalewska-Borys, Warszawa 2013, p. 70-86
15. E. Kowalewska-Borys, Proposition of a sniper law, (w:) *Pravotvorčestvo i pravoprimerenienie v uslovijach innovacionnogo razvitija obščestva – sbornik naučnyh statej v dvuch častijach. Č. 2, red. kol. N.V. Sil’čenko (gl. red.) i dr.*, Grodno 2014, p. 315-320
16. E. Pływaczewski, E. Kowalewska-Borys, E. Guzik-Makaruk, Bedingungen der Legalität und Grenzen der präventiven Datenerhebung über Einzelpersonen und Möglichkeiten ihrer Verwertung im Strafprozess, (w:) *Ausserprozessuale Beweiserhebung und ihre Verwertung im Strafprozess*, ed. P. Hofmański, D. Szumiło-Kulczycka, P. Czarnecki, Publisher C.H. Beck, Warsaw 2015, p. 341-354

17. E. Kowalewska-Borys, Sniper shot from constitutional perspective, (in:) the use of firearms as a means of direct coercion. Legal aspects, ed. R. Netczuk, Uniwersytet Śląski Publishing House, Katowice 2015, p. 107-115
18. E. Pływaczewski, E. Kowalewska-Borys, E. Guzik-Makaruk, Conditions of legality and the limits of preventive acquiring data about companies and the possibility of their use in a criminal trial, (in:) Process obtaining evidence and its use in a criminal trial, red. P. Hofmański, D. Szumiło-Kulczycka, P. Czarnecki, Wydawnictwo C.H. Beck, Warszawa 2015, p. 329-340

The published works extensively discuss proposed or adopted by the Polish legislator legal solutions in the field of criminal proceedings. Most of them are characterized by an interdisciplinary approach to the analyzed issues. The interdisciplinary context of studied legal instruments allows a more complete understanding of the legal architecture (adopted by the Polish legislator), its assessment and a forecast of the efficiency of its use. It also indirectly allows conclusions evaluating a direction of changes in the Polish model of criminal proceedings. Showing the mutual interactions of different areas of law enables the evaluation of the policy of law-making and rationality of the legislative power.

**The second area of the research concerns the law comparativism in the area of criminal procedural law.** The choice of this theme is primarily due to research experiences acquired at Rheinische Friedrich - Wilhelms - Universität Bonn, Rechts- und Staatswissenschaftliche Fakultät. After having received a title Master der Rechtsvergleichung (Magister iuris comparativi) my research interests have focused on the legal instruments and solutions related to Polish and German criminal proceedings. The research carried out within this area always concerned current and cognitively important procedural issues. Some of them were also presented in the form of presentations at scientific conferences. As their effect I indicate the publication of 7 scientific articles:

1. E. Kowalewska-Borys, Swiss definition of a criminal organization, (in :) Current problems of criminal law and criminology, ed. E. Pływaczewski, Publisher Temida 2, Białystok 2005, p. 88-101
2. E. Kowalewska-Borys, The importance and position of the constitutional Law of the German Federal Constitutional Court (Bundesverfassungsgericht), Public administration. National and International Studies 2006, nr 2, p. 42-46

3. E. Kowalewska-Borys, The German side accusations (Nebenklage) The Police Overview 2008, nr 1, p. 5-13
4. E. Kowalewska-Borys, The victim's participation in the German criminal trial - selected issues (in :) The problems of law and criminal procedure. The book dedicated to the memory of Professor Alfred Kaftal, ed. G. Rejman (et al.), Wydawnictwo Wydziału Prawa i Administracji UW, Warsaw 2008, p. 175-185
5. E. Kowalewska-Borys, D. Kuźelewski, The criminal and process institutions of reactions to petty crime in France and West Germany - an outline of the issues, (in :) Criminology and other sciences bridging in criminal proceedings, red. J. Kasprzak, B. Młodziejowski, Wydawnictwo Print Group, Olsztyn 2009, p. 315-328
6. E. Kowalewska-Borys, D. Kuźelewski, Adhesion procedure in Polish and German criminal process - an outline of the issues on the background of legal comparative, (in :) The law and procedural aspects of the remedy in light of the criminal codification of 1997. And proposing amendments, ed. Z. Cwiągalski i G. Artymiak, Oficyna Wolters Kluwer business, Warsaw 2010, p. 442-456
7. E. Kowalewska-Borys, Comments on the legal conditions of health care system in Germany (in :) The legal, economic and sociological conditioning of selected health care systems, ed. T. Mróz, Publishing House Temida 2, Białystok 2011, p. 197-218

**The third area of the research relates to the issue of the prohibition of *reformationis in peius* during the appeal procedure in the so-called consensual judgement.** In 2009-2010, within the Department of Criminal Procedure at the Faculty of Law, University of Białystok I finished a research grant on: Procedural agreements in judiciary practice, directed by prof. zw. dr. Hab. Cezary Kulesza. The object of the research was a legal analysis of the problematic aspects associated with the introduction to the Polish criminal trial the following consensual forms of termination of the proceedings: mediation (art. 23 of the Code of Criminal Procedure), an application for a conviction without a trial (Art. 335 and 343 of the CCP) and voluntary submission the punishment (art. 387 of the CCP).

Results of this study permitted to the preparation and publication of scientific papers indicated below:

1. E. Kowalewska-Borys, Some remarks about the possibilities of interpretation of the article. 434 § 3 of the CCP in the light of surveys of judges (in:) The assessment of the



agreement processes in the practice of justice, ed. C. Kulesza, Publisher Wolters Kluwer Polska, Warsaw 2009, p. 145-150

2. E. Kowalewska-Borys, (a chapter) Limiting the prohibition *reformationis in peius* in accordance with Art. 434 § 3 and art. 443 CCP, (in:) The criminal and procedure agreements in the practice of justice. Development on the basis of materials from the research grant, ed. C. Kulesza, Publisher Temida 2, Białystok 2010, p. 115-136
3. E. Kowalewska-Borys, Appeal proceedings pertaining to the so – called consensual verdicts from the perspective of the principle of fair trial, (in:) Criminal plea bargains in the English and the Polish administration of justice systems in the context of the fair trial guarantees. Collective work, ed. C. Kulesza, Publisher Temida 2, Białystok 2011, p. 142-165

**In the fourth research stream of my academic achievements are the works that are related to the issues of the so-called difficult procedure evidences.** These studies are related to the research grant obtained from the NCBiR "Infrastructure and equipment and procedures for technical and legal aspects associated with protection and storing the so-called difficult procedure evidences", contract No. GOOD-BIO4 / 068/13187/2013, in which I am the head of the team of the University of Białystok. The main objective of the project is to create and to adapt the infrastructure, equipment and legal and technical arrangements in order to protecting, storing and utilization of the so-called. difficult procedure evidences. The project responds to the challenges and needs of the Lisbon Strategy. The results of the research conducted together with Dr. Dariusz Kuźelewskim (the Department of Criminal Procedure, Faculty of Law, University of Białystok) were disseminated, inter alia, in the form of opinions of the experts and presentations at national and international conferences and published in the form of scientific papers:

1. Swedish National Council of Crime Prevention Stockholm Criminology Symposium 06.06.2015 – 11.06.2015, a paper and an post-conference publication: Dangerous evidence – from crime scene to safe storage and destruction
2. City University of Hong Kong, 7th Annual Conference of Asian Criminological Society 22.06.2015 – 28.06.2015, a paper and an after-conference publication: Dangerous evidence – about the need to regulate safe storage and destruction
3. article: Dangerous evidence as a tool for combating economic criminality – new challenges and trends, [in:] Bratislava Legal Forum 2015. Collection of Papers from the

International Academic Conference Bratislava Legal Forum 2015 organised by the Comenius University in Bratislava, Faculty of Law on 9th - 10th of October 2015 under the auspices of the Prime Minister of Slovakia Robert Fico, Bratislava 2015, s. 1246-1252

4. a professional research paper: Draft of the order of the Chief of the Police regarding conditions, ways and places of storage and the conditions and methods of destruction of objects, substances and samples that are dangerous for human life and health.

**In the fifth area of the research there is the issue of violence, especially the issue of domestic violence.** Rise to undertake these studies were the matters of the victims of the case, which I reviewed in the Psychological and Legal Foundation Spe Salvi in Bialystok. After having prepared the appropriate documentation, I applied to the Dean of the Faculty of Law of University of Bialystok prof. zw. Dr hab. Emil Pływaczewski with an initiative for the creation the Interdisciplinary Scientific Committee for Violence and Discrimination. He established it May 19, 2014, Order No. 2/14. Its members include research and teaching staff from the Faculty of Law, Faculty of Psychology and Pedagogy, practitioners, PhD students and students. The Commission took a number of initiatives and projects aimed at initiating and carrying out scientific work of relevance to the issues of violence and discrimination, as well as the interdisciplinary work of a study nature in cooperation with other entities, co-organization of conferences, seminars, including the ones with the participation of foreign guests, cooperation with local government authorities and government administration, particularly through the preparation of the opinions and providing expert opinions to these bodies, organizing projects aimed at implementing the results of scientific research in the field of violence and discrimination. As an example, the co-organization (with The Podlasie Chamber of Industry and Commerce, including The Podlasie Association of Companies' Female Owners – The Club of Businesswomen) of the scientific seminar „Violence against women and the law” should be noted. The seminar took place in the Chamber of Industry and Commerce in Bialystok, on 1st December. Another example is participation in preventive measures of the Provincial Police Station in Bialystok "Let us not be indifferent" in the winter season 2015/2016, including the anti-violence classes in the Prison in Bialystok and Detention Ward in Bialystok. As part of the committee's activity there was conducted examining of the legal judiciary acts in the appeal in Bialystok concerning criminal cases from the art. 207 of the Polish Criminal Code. Preliminary results and conclusions allowed to the preparation of the 6 scientific papers indicated below: 2

editorial collective scientific works, 3 chapters in collective works, including 2 in co-editing and 1 scientific article:

1. E. Kowalewska-Borys, A. Malarewicz-Jakubów, The concept and semantic scope of the domestic violence phenomenon, *Studies in Logic, Grammar and Rhetoric* 2011, vol. 26 (39), p. 183-195
2. E. Kowalewska-Borys (ed.), *The issue of domestic violence. Basic legal measures to protect victims*, Warsaw 2012, p.222
3. E. Kowalewska-Borys, Designs of chosen pleadings in criminal matters on the issues of domestic violence, (in:) *The issues of domestic violence. Basic legal measures to protect victims*, ed. E. Kowalewska-Borys, Warszawa 2012, p. 192-222
4. E. Kowalewska-Borys (ed.), *Domestic violence in the context of the Council of Europe Convention on preventing and combating violence against women and domestic violence*. Warsaw 2015, pp. 198
5. E. Kowalewska-Borys, E. Truskolaska, Basic assumptions and the concept of the Istanbul Convention, (in:) *Domestic violence in the context of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, ed. E. Kowalewska-Borys, Warsaw 2015, p. 24-51
6. E. Kowalewska-Borys, D. Brulińska, E. Truskolaska, A. Tywończuk-Gieniusz, The phenomenon of violence in the Podlaskie Region in the court files, (in:) *Domestic violence in the context of Council of Europe Convention on preventing and combating violence against women and domestic violence*, ed. E. Kowalewska-Borys, Warsaw 2015, p. 160-186

Moreover, the results of scientific research within this subject are disseminated also in the form of presentations at national conferences and in the experts' opinions.

## **5.2. Projects and research grants**

During my research I have participated in 4 research grants.

1. In 2009-2010, in the Department of Criminal Procedure at the Faculty of Law, University of Białystok I co-produced a research grant on: Procedural agreements in practice of the judiciary, headed by prof. zw. dr hab. Cezary Kulesza. The object of the research was the legal analysis of the issues associated with the introduction (to the Polish criminal trial) of the following consensual forms of termination of procedure:

mediation (art. 23 of the Polish Code of Criminal Procedure), an application for a conviction without a trial (Art. 335 and 343 of the CCP) and voluntary submission to the punishment (art. 387 Code of Criminal Procedure). For the research purposes there were 3 separate questionnaires prepared; they were addressed to the judges, prosecutors and lawyers. My share of research concerned the issues of the prohibition *reformationis in peius* in the appeal procedure on the so-called consensual judgement, its limitations and interpretations.

2. Since 2012 I have been realizing a research grant "Development and creation of a system of information management for the needs of the Centre for Abductions", the contract No. DOBR /0003/R/ID1/2012/03 (the nature of the participation: Manager of the University of Bialystok). The institution submitting the project is the Ministry of Internal Affairs, and the gestore is the General Police Headquarters of Poland. The main objective of the project is to create a Centre for Abductions - a cell of the analysis and management supporting a discovery process and commanding upon the occurrence of a situation of the abduction aimed at forcing ransom. My share of research concerns the analysis of the existing legal solutions and law and procedure instruments related to the crime of abductions for ransom and proposals *de lege ferenda*, eg. in the field of the normative regulations about a sniper shot.
3. Since 2013 I have been realizing a research grant "Infrastructure and equipment and procedures for technical and legal aspects associated with protection and storing the so-called difficult procedure evidences", contract No. GOOD-BIO4 / 068/13187/2013 (the nature of the participation: Manager of the University of Bialystok). The submitting institution is the Ministry of National Defence. The main objective of the project is to create and to adapt the infrastructure, equipment and legal and technical arrangements in order to protecting, storing and utilization of the so-called. difficult procedure evidences. The project responds to the challenges and needs of the Lisbon Strategy. My share of research concerns conducting the dogmatic study about provisions of Law on the Border Guard, Law on Customs Service Act and the Convention ADR (L'Accord européen relatif au transport international des marchandises Dangereuses par Route) to identify legal issues related to the protection and storing of the so-called the difficult procedure evidences along with the proposal of a comprehensive legal solution as well as specific trainings.
4. Since 2016 I have been participating in the research grant of prof. C. Kulesza: "Is Polish model of the appeal proceeding in criminal matters reliable?" OPUS HS 5. My share of

research concerns the analysis of legal solutions operating in the system of German law and the dogmatic analysis of the prohibition *reformationis in peius*.

My scientific activity has been recognized by the Rector of the University of Bialystok. In 2003 I received the award for a scientific work.

### **5.3. A teaching activity.**

Since the moment of my employment as an assistant at the University of Bialystok on 1 October 1996 I have been running various classes: the classes of criminal proceedings, a specific lecture: "German model of criminal proceedings", a specific lecture: "Criminal liability of legal persons", a specific lecture: "The legal basis for the operation of the uniformed services," a mandatory lecture at the administration faculty "The police law", a specific lecture "The police law", a proseminar "Criminal proceedings", pro-seminar and a seminar "Operational and cognitive activities", a pro-seminar and a seminar "Detective and security services," a pro-seminar and a seminar "Protection of classified information", a pro-seminar "Legal protection of the victim." I have already promoted a hundred bachelors and several dozens of both full-time and part-time university programmes. I have reviewed a hundred bachelor's theses and dozens of master's theses. As part of the Postgraduate Studies of the Judicial Mediators I have been lecturing "Fundamentals and principles of criminal law and criminal proceedings". In addition, as part of the Centre of Judiciary Practices I have been running together with Bogusław Żywolewski and Aneta Kaftańska the simulations of the criminal trials involving students.

Besides classes in Polish language, I also taught foreign students in German language within the European program LLP-Erasmus: "Formelles Strafrecht in Polen" and "Formelles Strafrecht in der Bundesrepublik Deutschland".

In order to improve my professional qualifications I have completed a course of e-learning, which I used to run some parts of the classes, using the blackboard platform as a basic method.

In the School of Public Administration in Ostrołęka I lectured on "Juvenile delinquency" and "Issues of violence and discrimination," as well as a seminar on "Juvenile delinquency". I was also the initiator and the director of the Postgraduate Study of Mediators and Judicial Administrators.

#### **5.4. Organisational activity**

The knowledge I gained during Polish and German studies and the professional experience I use in my organisational activities.

For several years I have been a member of the Editorial Board of the Bulletin of the Faculty of Law of the University of Białystok. I was also a member of the Editorial Board of "Legal Education". Since the creation of The Psychological and Legal Counselling Centre Spe Salvi in Białystok in 2009, I have been providing pro-bono legal advice, helping to write law documentation and consulting students of the Faculty of Law University of Białystok in the field of provided legal opinions. In 2011-2015, I was a tutor of the practices of the students whose specialisation was of criminal law and finances and economy (part-time programme of the law studies). Since 2012 I have been a member of the Faculty of Law Council of University of Białystok. In 2014 I was the initiator of the creation of Interdisciplinary Scientific Committee for Violence and Discrimination at the Faculty of Law, University of Białystok, of which I am the president. As a part of the commission's activity the research in collaboration with experts from different fields is conducted (with teachers, psychologists, doctors, police officers), there are also the studies of case files organized. The effects of this activity are disseminated by organizing lectures, seminars and conferences. What deserves particular attention is a common, multifaceted action of the interdisciplinary committee, the Regional Police Headquarters in Białystok (leader of the action), the Prison in Białystok, The Detention Ward in Białystok, the students of Medical University and alumni of the Catholic Seminary in Białysto. The action was named "Let us not be indifferent". It was accomplished in the winter season of 2015/2016. In the academic year 2014/15 I participated in the work of the Team for Monitoring Process of Education at criminology faculty. Moreover, together with officers of the Customs Chamber in Białystok I organize regular scientific conferences for the uniformed services, whose purpose is the exchange of knowledge and practical experience in the field of their statutory activities. The participants of the conference are officers of the state, representatives of the judiciary, government, local government and the scientific community. The results are two post-conference publications: Pływaczewski E. (ed.), And Kowalewska-Borys (ed.), Combating smuggling. Collection of good practices. Different perspectives - a common goal, Warsaw 2013 Pływaczewski E. (ed.) And Kowalewska-Borys (ed.), Illegal introduction of excise goods into the European Union, Warsaw 2015.

In 2002-2005 I ruled on disciplinary matters of students in the framework of the university disciplinary committee for students. On the other hand, in 2005-2008 I acted as a

public defender for disciplinary matters of the academic teachers. On 1 September 2012 I was appointed to the post of the disciplinary ombudsman for the Academic Teachers by the Rector of the University of Białystok prof. zw. dr hab. Leonard Etel. However, on 18 December 2012 I resigned from this function.

### **5.5. Popularization the science.**

Popularizing the science is a very important activity for me. I take part in the expert activities of UwB (University of Białystok) very actively.

Aiming at popularizing science, in 2006 I proposed and ran a specific lecture about the German criminal procedure on the faculty of law. In addition, I provided training for security guards and doctors. The results of this activity are 4 publications: Kowalewska-Borys, "Instruments of legal protection of medical records" and Kowalewska-Borys, Wojciech Wojtal "Sharing, storing and destruction of medical records" (in:) The medical records, ed. U. Drozdowska, Warsaw 2011 2012; Kowalewska-Borys, E. Leja, Fundamentals of law in questions and answers, Warsaw 2011, Kowalewska-Borys, Criminal proceedings – script, Legal Education 2012, No. 4, pp. I - XXX.

In connection with the new program of the Ministry of the Interior and Administration "A district police officer closer to us," and the new concept of working in districts, together with prof. zw. dr hab. Teresa Mróz, I provide trainings of the district police officers, which are organized by the Regional Police Headquarters of Białystok in July 2016.

In turn, the study of the files of court cases concerning domestic violence, organized seminars and scientific conferences as well as scientific publications, including a collective work "Violence in the family in the context of the Council of Europe Convention on preventing and combating violence against women and domestic violence" (Warsaw 2015) edited by me, were supposed to be an objective and factual trend in an awakening extraordinary emotions and controversial discussion on the so-called. Stambul Convention.

*Ewa Kowalewska-Borys*