ADMISSIBILITY OF A CASSATION APPEAL AGAINST THE JUDGMENT ON DISCONTINUANCE OF PROCEEDINGS DUE TO A PERPETRATOR'S INSANITY AND APPLICATION OF PREVENTIVE MEASURES

DOROTA PARAPURA*

DOI: 10.26399/iusnovum.v14.3.2020.27/d.parapura

The discontinuance of proceedings in accordance with Article 17 § 1(2) of the Polish Criminal Procedure Code (henceforth CPC) in relation to an insane perpetrator, in conjunction with the application of preventive measures laid down in Article 93a § 1 and § 2 of the Polish Criminal Code (henceforth CC) can take place at different stages of criminal proceedings.

In preparatory proceedings, a prosecutor can lodge a motion to a court to discontinue the proceedings and apply preventive measures (Article 324 § 1 CPC). As a rule, the court hears the motion on trial (Article 354(2) *in principio* CPC). When examining the grounds, the court adjudicates on the issue of the perpetration of a prohibited act by the suspect and the need to prevent its repeated commission (preventive measures). It is connected with the necessity of collecting and assessing evidence and reconstructing the facts concerning the perpetration, analysing the elements of social harmfulness of the acts in question and evaluating the level of their harmfulness. The type of a preventive measure to be applied and the way in which it is to be executed must be commensurate with the level of social harmfulness of the act. Placing a perpetrator in an appropriate psychiatric hospital is possible only when the act committed shows a 'significant' level of this criterion (Article 93b § 1 sentence 2 and § 3 sentence 1 CC). The preventive measure in the form of placement in a psychiatric hospital matches the hardship of the penalty of

* MA, senior assistant to a judge of the Supreme Court Criminal Chamber, doctoral student at the Institute of Law Studies of the Polish Academy of Sciences; e-mail: d.parapura@op.pl; ORCID: 0000-0003-3291-4619

deprivation of liberty, however, the length of its application is not determined in advance. In such conditions, the trial most fully safeguards the suspect's rights.[1]

A trial is conducted based on the principles laid down in the Criminal Procedure Code prescribed for this forum, however, its openness is excluded *ex lege* and the legislator did not envisage whatever exceptions to this rule (Article 359(1) CPC). A person whom a prosecutor accuses of the commission of a prohibited act and applies for the discontinuance of proceedings and application of preventive measures is subject to the provisions concerning the accused applied by analogy (Article 380 CPC). In accordance with Article 354(1) CPC, in the case of proceedings concerning a prosecutor's motion to discontinue the proceedings and apply preventive measures, the provisions concerning auxiliary prosecutors are not applicable and a victim cannot be a party to the proceedings, which also affects cassation proceedings.

The provision of Article 354(2) CPC does not determine the type of judgment issued after a trial. It should be derived from a general rule expressed in Article 93 § 1 CPC, which stipulates that in case there is no statutory obligation to issue a sentence, a court should adjudicate by issuing a ruling. Such a conclusion also results from Article 354(3) CPC, which provides that in the case of discontinuance, Article 322 § 2 and § 3 CPC should be applied directly and not 'by analogy' as in the case of Article 414 § 2 CPC. The provision determines what elements should be included in the ruling on discontinued proceedings. Case law and most of the representatives of the legal doctrine remain unanimous as far as the type of judgment issued in accordance with Article 354(2) CPC is concerned.[2] Failure to apply the appropriate form may constitute grounds for lodging, and also accepting, an appellate measure.[3]

The prosecutor's motion can be heard on trial only exceptionally if all the following conditions are met jointly:

1) in the light of the material of the preparatory proceedings, there is no doubt that:
   a) the suspect has committed an offence;
   b) he/she was sane at the moment of the act commission;[4]

---

[1] P. Rogoziński, [in:] S. Steinborn (ed.), *Kodeks postępowania karnego. Komentarz do wybranych przepisów*, LEX/el. 2016, Article 354, no. 8; L.K. Paprzycki (ed.), *Komentarz aktualizowany do art. 1–424 Kodeksu postępowania karnego*, LEX/el. 2015, Article 345, no. 8.

[2] The Supreme Court resolution of 19 August 1999, I KZP 21/99, OSNKW 1999, No. 9–10, item 49; the Supreme Court ruling of 6 October 2011, III KZ 67/11, LEX No. 1044043; the Supreme Court judgment of 12 December 2012, II KK 326/12, LEX No. 1231522; R.A. Stefański, [in:] Z. Gostyński (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 1998, p. 225; P. Hofmański (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 1999, pp. 287–288; A. Ważny, [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2015, pp. 778–779; K. Eichstaedt, *Środek zabezpieczający w postaci pobytu w zakładzie psychiatrycznym, wątpliwości związane z orzekaniem*, Prokuratura i Prawo 12, 2016, pp. 75–94; although differently, L.K. Paprzycki, *Kodeks postępowania karnego. Komentarz*, LEX/el., Article 354, no. 20.

[3] The Supreme Court judgment of 12 December 2012, II KK 326/12, LEX no. 1231522. The judgment was issued as a result of hearing a cassation case indicating the breach of Article 354 (2) CPC and Article 414 § 1 CPC. In case of appeal against a judgment issued in an inappropriate form, it is possible to apply the same charge to the infringement under Article 438 (2) CPC.

[4] The criteria are not subject to extended interpretation; see the Supreme Court ruling of 17 March 2008, V KK 30/08, OSNKW-R 2008, No. 1, item 663.

2) the court president, an authorised judge (Article 93 § 2 CPC) or a court[5] recognises it as purposeful.

The lack of doubts in the meaning of Article 354(2) CPC is a situation where as early as during the initial stage of the examination of a motion, in the light of evidence collected in the course of the preparatory proceedings, there are no reservations concerning the commission of an act by the suspect and his/her insanity.[6] Filing a motion to be heard at a session should be done carefully. The occurrence of evidence confirming a different course of events, unclear content of evidence collected, including, in particular, judicial and psychiatric opinions, are arguments for filing a motion to hear a case on trial.[7] Hearing a motion at a session should take place without prejudice to the suspect's procedural guarantees. A prosecutor and a counsel for the defence are obliged to participate in the session. As a rule, a suspect should take part in the session and the obligation can be abandoned only in case expert witnesses unanimously state it would be inadvisable. But even in such cases, a court may decide that a suspect's participation is necessary (Article 354 sentence 2 CPC). A victim can also participate in the session. Paradoxically, it extends the scope of his/her rights even if it concerned only the ability to express his/her own reasons in a trial, which is not only conducted with the exclusion of openness but also without the participation of an auxiliary prosecutor in the proceedings, as it has been mentioned above.

A court is bound by a prosecutor's motion, which means that in the case of recognition of grounds for that, it should adjudicate on the discontinuance of proceedings or application of a preventive measure. However, it is not obliged to rule on a preventive measure that a prosecutor has applied for. If the court is convinced that it is necessary to apply another preventive measure (Article 93a § 1 and § 2 CC), it discontinues the proceedings and rules on the application of that measure.[8] On the other hand, in the case it recognises the lack of grounds for accepting the motion, the court refers the case to the prosecutor in order to continue the proceedings (Article 324 § 2 CPC).

A court's decision to discontinue the proceedings and a ruling to apply a preventive measure can be appealed against, regardless of the forum where the case has been heard (Article 459 § 1 and § 2 CPC).

The circle of entities that are entitled to appeal against a court's decision on discontinuing the proceedings and applying a preventive measure includes the parties and persons who are not parties to the proceedings but the decision concerns them directly (Article 459 § 3 CPC). Thus, a prosecutor as well as a person who is subject to the discontinued proceedings and the application of a preventive measure

---

[5] D. Świecki, [in:] D. Świecki (ed.), *Kodeks postępowania karnego*, Vol. I: *Komentarz aktualizowany*, LEX/el. 2020, Article 354, no. 8.

[6] K. Eichstaedt, [in:] D. Świecki (ed.), *supra* n. 5, Article 354, no. 8.

[7] P. Rogoziński, [in:] S. Steinborn (ed.), *supra* n. 1, Article 354, no. 10.

[8] The Supreme Court resolution of 26 September 2002, I KZP 13/02, OSNKW 2002, No. 11–12, item 88; decision of the Court of Appeal in Katowice of 22 March 2017, LEX No. 2333277; R.A. Stefański, *supra* n. 2, p. 116; P. Hofmański (ed.), *supra* n. 2, p. 138; M. Kurowski, [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. I, Warszawa 2018, p. 1210; B. Skowron, [in:] K. Dudka (ed.), *Kodeks postępowania karnego. Komentarz*, Wolters Kluwer Polska 2018, Article 324, no. 7.

may undoubtedly file a complaint against the decision. However, there are doubts concerning the status of a victim in the proceedings conducted in accordance with Article 354(2) CPC, and more precisely, whom the decision directly concerns.

In order to resolve the problem, first of all, it is necessary to determine at which stage of the proceedings a court deals with a prosecutor's motion lodged in accordance with Article 324 § 1 CPC. It is important to establish whether these are preparatory proceedings where a victim is a party pursuant to Article 299 § 1 CPC and the court's adjudication is a judicial action in the proceedings or judicial proceedings in which a victim's action as a party depends on his/her role of an auxiliary prosecutor (Articles 53 and 54 § 1 CPC). There is no unanimous stand on this matter in literature.

Some representatives of the doctrine are of the opinion that a prosecutor's motion lodged in accordance with Article 324 § 1 CPC constitutes a court's action in preparatory proceedings and the decision issued is a special type of judgment closing this stage of the proceedings.[9] They argue that upon determining parties to proceedings in Article 354 CPC, the legislator used the terms typical of preparatory proceedings, i.e. 'a suspect' and 'a victim', and not 'the accused' or 'a party'. It is also raised that in relation to the motion alone the situation is not similar to the case of filing an indictment, i.e. it becomes independent of a prosecutor's will (Article 14 § 2 CPC). In the proceedings concerning a motion, in a situation when a court does not recognise grounds for it or upon its withdrawal,[10] the case is referred to a prosecutor to be continued (Article 324 § 2 CPC), which may further result in the prosecutor's lodging of an indictment or discontinuance of the preparatory proceedings. Moreover, the type of adjudication in the form of a ruling and not a sentence is typical of preparatory proceedings. The discontinuance of these preparatory proceedings is a prosecutor's competence (Article 322 § 1 CPC), and a court's competence in this area occurs when there are grounds for the application of a preventive measure (Article 324 § 1 CPC). Statutory provisions also lack norms in accordance with which a prosecutor's motion to discontinue proceedings and apply a preventive measure might, in certain circumstances, substitute for an indictment as it happens, e.g. in relation to a motion to discontinue proceedings conditionally (Article 341 § 2 CPC). The provision of Article 354(1) CPC should be interpreted only as a logical consequence of a fact that the prosecutor is not a counsel for the prosecution in these proceedings and does not lodge an indictment, and a person who is charged with an offence is not the accused.[11]

A different stand is based on an assumption that proceedings conducted pursuant to Article 354 CPC do not constitute a court's interference into preparatory proceedings and are part of the judicial phase with some differences concerning the ruing on a preventive measure. As far as formal requirements are concerned,

---

[9] K. Eichstaedt, *Glosa do uchwały SN z 25 lutego 2005 r., I KZP 35/04*, Palestra 3–4, 2007, item 306.

[10] Resolution of seven judges of the Supreme Court of 26 September 2002, I KZP 13/02, OSNKW 2002, No. 11–12, item 88.

[11] K. Eichstaedt, *supra* n. 2, pp. 75–94; glosses on the Supreme Court resolution of 25 February 2005, I KZP 35/04: K. Eichstaedt, Palestra 3–4, 2007, item 306; W. Sych, Przegląd Sądowy 3, 2006, item 132; K. Eichstaedt, [in:] D. Świecki (ed.), *supra* n. 5, Article 354, no. 9.

a motion to discontinue the proceedings and apply a preventive measure is close to an indictment (Article 324 § 1a CPC) and constitutes a basic complaint instigating judicial proceedings.[12] The Supreme Court has also supported such interpretation and indicated that, as a rule, adjudication on the matter of a motion is performed on trial, which is not envisaged at the stage of preparatory proceedings, and that the provisions applied in these proceedings are placed under Chapter 41 concerning preparation for a trial, and the court hearing the motion adjudicates as a bench specified in Article 28 § 1 CPC and not that prescribed for a court's action in preparatory proceedings (Article 329 § 1 CPC). If the proceedings conducted pursuant to the mode laid down in Article 354 CPC were not judicial ones, the regulation included in para. 1 of the provision would be useless. There is no doubt that the provisions concerning an auxiliary prosecutor excluded based on it apply in judicial proceedings and not preparatory ones.[13] Approving of the grounds for those stands, it is necessary to add that before an indictment and a motion to discontinue proceedings are lodged, a prosecutor issues a decision to close the investigation (Article 321 § 6 and Article 324 CPC). This procedural decision, regardless of possible future court's decisions, finishes the stage of preparatory proceedings at the time.

The Supreme Court has adopted this direction of interpretation and expressed it in one of its judgments based on Article 521 CPC in the wording of 1 July 2003.[14] It recognised that a judgment issued in accordance with Article 354(2) CPC is a court's judgment closing the 'court's' proceedings in the meaning of Article 521 CPC and can be subject to a cassation appeal brought by parties determined in this provision.[15] If one analyses the present wording of the above-mentioned provision, the doubts existing then are out-of-date because an extraordinary cassation appeal may apply to 'final court's judgments that close proceedings', thus those issued by a court in the course of the preparatory proceedings and during the judicial ones, but due to the nature of the proceedings closing the 'judicial proceedings', they still remain up-to-date and support the opinion that adjudicating on a prosecutor's motion to discontinue proceedings and apply preventive measures takes place within the framework of these proceedings.

---

[12] P. Rogoziński, [in:] S. Steinborn (ed.), *supra* n. 1, Article 354, no. 2; J. Grajewski, P. Rogoziński, [in:] S. Steinborn (ed.), *supra* n. 1, Article 324, no. 4; T. Grzegorczyk, *Kodeks postępowania karnego*, Vol. I: *Artykuły 1–467. Komentarz*, LEX 2014, Article 354, no. 8; A. Ważny, [in:] A. Sakowicz (ed.), *supra* n. 2, p. 779.

[13] The Supreme Court resolution of 25 February 2005, I KZP 35/04, OSNKW 2005, No. 2, item 14 with glosses by: D. Kaczmarska, Przegląd Sądowy 1, 2006, item 14; K. Woźniewski, *Pokrzywdzony w postępowaniu sądowym na podstawie art. 354 k.p.k.*, GSP-Prz. Orz. 4, 2005, pp. 81–86; W. Marcinkowski, Wojskowy Przegląd Prawniczy 2, 2005, item 138; K. Dudka, *Uprawnienia pokrzywdzonego do zaskarżenia postanowienia sądu wydanego w trybie art. 354 k.p.k.*, Państwo i Prawo 7, 2005, pp. 119–122.

[14] Before the amendment of the Criminal Procedure Code introduced by the Act of 10 January 2003 amending the Act: Criminal Procedure Code, the Act: Provisions implementing the Criminal Procedure Code, the Act on crown witnesses and the Act on the protection of classified information (Dz.U. 2003, No. 17, item 155), the provision stipulated that the Minister of Justice-Prosecutor General, and the Ombudsman could file a cassation appeal against every final judgment closing 'court's' proceedings.

[15] The Supreme Court ruling of 5 April 2001, IV KKN 652/00, LEX No. 51426.

The consequence of recognising that the moment a prosecutor lodges a motion to discontinue proceedings and apply a preventive measure it enters the stage of judicial proceedings is the assumption that a victim in these proceedings is not entitled to the status of a party.[16] The persons' rights are that a prosecutor must inform them about lodging a motion with a court (Article 324 § 1a CPC), and they must be notified of the time and place of a trial (Article 350 § 4 in conjunction with Article 354 § 1 CPC), and in the case of proceedings in a session, they must be notified of it as they have the right to participate (Article 117 § 1 CPC). Apart from the fact that they are not parties, they are not persons who are not directly concerned in the meaning of Article 459 § 3 CPC, which results in inadmissibility of their appeal against a ruling. Thus, they are not entities entitled to lodge a cassation appeal (Article 520 § 1 *a contrario* CPC). They may only do that via entities determined in Article 521 CPC.

One of the aims of criminal proceedings is to respect legally protected interests of a victim (Article 2 § 1(3) CPC), which the legislator should also take into account at the time of determining their rights in proceedings concerning a case in which a perpetrator being in the state of insanity has committed an offence to their detriment. Allowing victims to participate in the proceedings, and at the same time depriving them of the possibility of being procedurally active in their favour, also in the context of cassation proceedings in which the parties' right to appeal against a ruling issued in accordance with Article 354(2) CPC were extended, makes the above guarantee illusory. The justification may only be looked for in the specificity of proceedings where, in case of recognition that the suspect has committed an act due to a negative procedural condition, there is no conviction, which excludes the application of compensatory measures. However, no consistence can be found here. If a court does not find grounds for the application of a preventive measure, in accordance with Article 324 § 1 CPC, it refers the case to a prosecutor to continue the proceedings. As a result, these may be also discontinued in accordance with Article 17 § 1(2) CPC, against which a victim, who is a party in the preparatory proceedings, may appeal. In the judicial proceedings, he/she is deprived of such a possibility. His/her status is also different in proceedings conducted in the same matter but when the circumstances necessary for discontinuance of the proceedings occur after opening a trial.

If circumstances evidencing a perpetrator's insanity do not occur in preparatory proceedings and the proceedings are not closed by a motion pursuant to Article 324 § 1 CPC but an indictment or a motion referred to in Article 335 § 1 CPC or Article 336 § 1 CPC, and there are grounds for accepting them after a trial starts (Article 385 § 1 CPC), then, in accordance with Article 414 § 1 *in fine* CPC, a court issues a judgment discontinuing the proceedings. The discontinuance of the proceedings based on the above-mentioned circumstances excluding prosecution may be connected with the application of a preventive measure. In accordance with Article 414 § 3 CPC, in the case of discontinuance of proceedings for this reason, if the results of judicial proceedings justify that, a court applies a preventive measure stipulated in Article 93a § 2 CC, i.e.

[16] P. Rogoziński, [in:] S. Steinborn (ed.), *supra* n. 1, Article 354, no. 2; J. Grajewski, P. Rogoziński, [in:] S. Steinborn (ed.), *supra* n. 1, Article 324, no. 4; T. Grzegorczyk, *supra* n. 13, Article 354, no. 8; A. Ważny, [in:] A. Sakowicz (ed.), *supra* n. 2, p. 779.

a ban on holding specific posts, a ban on exercising specific professions or engagement in specific business activities as well as a ban on driving, or in Article 22 § 3(5) and (6) Fiscal Penal Code, i.e. forfeiture of property, a ban on exercising specific professions or holding specific posts. It is not a closed catalogue of preventive measures that can be ruled on at a trial. A court may rule on measures listed in Article 93a CC (Article 93c § 1 CC), and also placement in a psychiatric hospital in order to prevent the perpetrator from repeated commission of a prohibited act of considerable social harmfulness (Article 93b § 1 sentence 1 CC). The court decides about the placement in a psychiatric hospital of a perpetrator against whom the proceedings have been discontinued because he/she committed a prohibited act in the state of insanity referred to in Article 31 § 1 CC (Article 93c(1) CC) if there is a high probability that he/she will commit a prohibited act of considerable social harmfulness again due to a mental illness or mental disability. In such cases, the court issues a judgment on discontinuing the proceedings and applying a preventive measure (Article 414 § 1 CPC).

In proceedings instigated by an indictment or its substitute, provided victims express such a will, they may be a party (Article 54 § 1 CPC) and, depending on whether they exercise this right, have the right to appeal against a sentence (Article 422 § 1 CPC and Article 425 § 1 CPC). It can be noticed that in relation to this entity, there is clear inconsistence concerning the possibility of appealing against judgments on discontinuance of proceedings and applying preventive measures. Different forms of judgments, depending on the stage of the proceedings when a perpetrator's insanity has been recognised, also decide on admissibility of a cassation appeal that a victim can file in the case of an obstacle referred to in Article 520 § 2 CPC only when a sentence is issued.

The problems that arise in relation to the rights of the subject to proceedings are not smaller. While there are no doubts that the party to the proceedings has a right to appeal against a judgment on the discontinuance of the proceedings and application of preventive measures, their access to a cassation appeal raises a series of questions.

Article 519 CPC in the wording prior to 1 July 2015[17] stipulated that only a final sentence issued by an appellate court and closing the proceedings can be subject to a cassation appeal. The above-mentioned regulation directly resulted in the fact that rulings were excluded from the parties' objective scope of cassation (Article 520 § 1 CPC).[18] Thus, unlike appellate courts' sentences closing proceedings issued as a result of hearing an appeal against judgments on the discontinuance of proceedings and applying preventive measures adopted in circumstances referred to in Article 414 § 1 CPC, an appellate court's ruling closing proceedings issued as a result of hearing a complaint against a judgment on the discontinuance of proceedings due to a perpetrator's insanity and the application of a preventive measure, issued at a trial or at a session in accordance with Article 354 (2) CPC, could

[17] As amended by the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts (Dz.U. 2013, item 1247).

[18] The Supreme Court rulings of 23 September 1999, III KZ 97/99, LEX No. 39109, and of 13 July 2000, IV KZ 46/00, LEX No. 491416.

not be subject to a cassation appeal filed by the parties but only to an extraordinary cassation appeal (Article 521 CPC).[19]

After the Act of 20 July 2000 amending the Act: Criminal Procedure Code, Provisions implementing the Criminal Procedure Code and the Act: Fiscal Penal Code[20] entered into force, the above-mentioned change introduced new broad limitations of the objective scope of cassation depending on its aim. Cassation in favour could be lodged only in the case of conviction for an offence or a fiscal offence for the penalty of absolute deprivation of liberty (Article 523 § 2 CPC), and cassation to the disadvantage could be brought only in the case of acquittal or discontinuance of proceedings, at the beginning for reasons referred to in Article 17 § 1(3) and (4) or because of a perpetrator's insanity, and then as a result of the successive amendment based on the Act of 11 March 2016 amending the Act: Criminal Procedure Code and some other acts,[21] due to all reasons for discontinuance of proceedings (Article 523 § 3 CPC).

As a result, a doubt was also raised in connection with a cassation appeal by a person who was subject to discontinued proceedings and to whom a preventive measure was applied: second-instance judgments concerning sentences issued in accordance with Article 414 § 1 CPC. A literal interpretation of those regulations led to a conclusion that a cassation appeal against a sentence discontinuing proceedings was only possible to the disadvantage, which excluded a possibility of filing it by a party who was subject to discontinued proceedings and a preventive measure, and only a prosecutor or a victim acting as a party (under some conditions referred to in Article 54 § 1 and Article 520 § 2 CPC) were entitled to file it. It did not only concern a situation in which a party raised the occurrence of a violation determined in Article 439 CPC (exclusion referred to in Article 523 § 4 CPC).

In relation to the preventive measure in the form of placement in a closed psychiatric hospital, the Supreme Court expressed the opinion that the above-mentioned limitation was not applicable to sentences discontinuing proceedings and ruling this measure.[22] It decided that the application of this preventive measure was a situation analogous to adjudication on a correctional measure in the form of placement of a minor in a juvenile detention centre in relation with which one judgment stated admissibility of cassation.[23] The Supreme Court came to a conclusion that the same reasons supported the extension of cassation cognition also into psychiatric detention ruled in accordance with Article 414 CPC. Referring to the justification for the Bill amending Article 523 CPC that accepted grounds for cassation only in the case of most painful convictions, the Court assumed that although the discontinuance of proceedings and application of a preventive

---

[19] The Supreme Court rulings: of 5 May 2008, IV KZ 18/08, LEX No. 609594; of 25 March 2009, IV KZ 15/09, LEX No. 608539; of 4 November 2010, V KK 211/10, OSNwSK 2010, No. 1, item 2170; of 19 February 2014, II KZ 6/14, LEX No. 1427408; of 6 October 2011, III KZ 67/11, LEX No. 1044043; of 2 October 2007, II KZ 33/07, OSNwSK 2007, No. 1, item 2158.

[20] Dz.U. 2000, No. 62, item 717.

[21] Dz.U. 2016, item 437.

[22] The Supreme Court ruling of 30 August 2007, II KZ 25/07, OSNKW 2007, No. 9, item 66, with a gloss of approval by D. Miszczak, OSP 2008, No. 5, item 57 and a critical one by K. Sychta, Palestra 9–10, 2009, pp. 273–283.

[23] The Supreme Court ruling of 12 July 2001, III KZ 39/01, OSNKW 2001, No. 9–10, item 82.

detention measure did not mean conviction and punishment, nevertheless, taking into account actual painfulness, indeed it did not differ from deprivation of liberty within the execution of a penalty. Thus, a cassation in favour with respect to such a sentence should be admissible. Approving of this interpretation, it is necessary to notice that the above-mentioned argument cannot be extended to the entirety of preventive measures the painfulness of which in relation to the most severe one is incomparably smaller and does not result in the limitation of liberty, e.g. a ban on driving motor vehicles (Article 39(3) CC), a ban on holding specific posts (Article 39(2) CC), or other penal measures listed in Article 39(2)–(3) CC, which pursuant to Article 93a § 2 CC may be also adjudicated as preventive measures.

What was to support the extended interpretation of the objective scope of cassation in the light of the statutory limitations under Article 523 § 2 and § 3 CPC was also the fact that they are applicable to criminal proceedings only in their main course and not to the issues connected with adjudication on criminal liability of the accused. Consequently, it was concluded that the admissibility of cassation in favour was invalid with respect to a sentence discontinuing proceedings and ruling the placement of a perpetrator in a psychiatric hospital or a juvenile perpetrator in a juvenile detention centre, as well as compensation regulated in Chapter 58 CPC or compensation and redress adjudicated in accordance with the Act of 21 February 1991 on the recognition of judgments issued against persons victimised for the fight for the independent Polish State.[24] This argument referred to the motives behind the Supreme Court resolution of 24 July 2001, I KZP 15/01,[25] which stated inadmissibility of cassation adjudicated based on the above-mentioned statute. However, while in the proceedings concerning compensation and redress a court indeed does not adjudicate on a perpetrator's criminal liability, and as a result it cannot be assumed that limitations concerning the accused under Article 533 § 2 and § 3 CPC do not apply to the applicant, in the proceedings concerning discontinuance and application of a preventive measure a penalty is not actually administered because in the case of insanity at the time of an act commission a perpetrator cannot be attributed guilt (Article 31 § 1 CC), however, legal consequences of the act commission are adjudicated in the form of the placement in a psychiatric hospital. Thus, it is an action where a perpetrator plays the procedural role of the accused or a suspect who are subject to appropriate provisions applicable to the accused (Article 380 CPC) and there is no justification for treating these proceedings by analogy with the proceedings concerning compensation and redress. In the above-mentioned resolution, the Supreme Court expressed an opinion that in the light of Article 519 sentence 1 and Article 523 § 2 CPC, cassation in favour of the accused may be filed at present only in the case of conviction for an offence or a fiscal offence with a sentence of the penalty of deprivation of liberty without conditional suspension of its execution, thus with the exclusion of a possibility of filing it against other sentences or for acts other than offences, and sentences concerning the discontinuance or conditional

[24] Dz.U. 2015, item 1583; the Supreme Court ruling of 24 July 2001, I KZP 15/01, OSNKW 2001, No. 9–10, item 74; B. Augustyniak, K. Eichstaedt, M. Kurowski, [in:] D. Świecki (ed.), *Kodeks postępowania karnego*, Vol. II: *Komentarz aktualizowany*, LEX/el. 2020, Article 523, no. 43.

[25] OSNKW 2001, No. 9–10, item 74.

discontinuance of criminal proceedings. This type of interpretation was presented in the Supreme Court case law and rightly assumed inadmissibility of a cassation appeal in favour of the accused (after 1 September 2000), inter alia, in the case of conditional discontinuance of proceedings,[26] unconditional discontinuance,[27] or in cases concerning misdemeanours[28]. Thus, the Supreme Court was for inadmissibility of cassation in favour filed against discontinuance of proceedings.

As a result, access to a cassation appeal in the case of a judgment on the discontinuance of proceedings and application of preventive measures did not have a uniform nature. Whether a party could use this extraordinary appellate measure did not depend on the object of adjudication but on the stage of proceedings during which the judgment was issued. It determined the type of judgment and, in the face of limitation of cassation by the parties to appellate courts' final sentences closing the proceedings (Article 519 CPC), it excluded a cassation appeal against the ruling. After the ruling was issued as a result of hearing a prosecutor's motion filed in accordance with Article 324 § 1 CPC, it was only possible to file a cassation appeal in accordance with Article 521 CPC. When a negative procedural condition was recognised on trial, the discontinuance of proceedings and application of a preventive measure always adopted the form of a sentence, a party had the right to a cassation appeal to the disadvantage not only due to the reasons laid down in Article 439 CPC (Article 523 § 4(1) CPC) but also because of another instance of flagrant violation of law that could have significant influence on the content of the judgment (Article 523 § 1 CPC). However, in accordance with the opinion expressed in the Supreme Court judgment of 30 August 2007, II KZ 25/07,[29] this extraordinary appellate measure in favour was available only for a judgment concerning the most painful preventive measure.

The issue has been addressed in literature. The normative state that does not give a perpetrator who was to be deprived of liberty in a closed psychiatric hospital the right to a cassation appeal against this judgment but only a possibility of applying to special entities to file a cassation appeal in accordance with Article 521 CPC is presented as one that did not follow the appropriate standards of the constitutional principle of equality before law. It is indicated that the moment when a perpetrator's insanity is recognised should not decide on admissibility of cassation; it should be the fact of issuing a judgment discontinuing proceedings and applying a preventive measure that is detention-like in nature.[30] The issue resulted in *de lege ferenda* proposals that when a prosecutor files a motion in accordance with Article 324 § 1 CPC and a case is referred to a session in order to issue a judgment concerning the discontinuance of proceedings and application of preventive measures, a court should always issue a sentence. On the other hand, *de lege lata*, if in accordance with Article 380 CPC the provisions concerning

---

[26] The Supreme Court ruling of 7 March 2001, II KKN 6/01, unpublished.

[27] The Supreme Court ruling of 31 January 2001, V KZ 131/00, unpublished.

[28] The Supreme Court rulings of 2 February 2001, V KKN 550/00 and of 3 April 2001, IV KZ 22/01, unpublished.

[29] The Supreme Court ruling of 12 July 2001, III KZ 39/01, OSNKW 2001, No. 9–10, item 82.

[30] S. Zabłocki, P. Hofmański, *Reforma procedury karnej a Sąd Najwyższy*, [in:] P. Kardas, T. Sroka, W. Wróbel (eds), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, Vol. II, Warszawa 2012, pp. 1631–1635.

the accused are applied by analogy to a person who is charged with commission of a prohibited act in the state of insanity, there have been calls for considering whether Article 519 CPC should not be applied by analogy to final judgments issued by an appellate court and closing proceedings by discontinuance and the application of a preventive measure, in spite of the fact that the judgment is not a sentence.[31]

Having in mind the need to standardise access to a cassation appeal in this kind of cases, as the exception to a rule that an appeal with the application of this measure can be filed against sentences determined in Article 519 CPC, with the introduction of the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts[32] the legislator created a possibility of filing a cassation appeal against 'final appellate court judgments discontinuing proceedings and applying a preventive measure laid down in Articles 93 and 94 Criminal Code'. At that time, the provisions regulated adjudication on placement in a psychiatric hospital. Under the rule of symmetry, a cassation appeal became available only against a ruling on the discontinuance of proceedings and application of this measure. The justification for the Bill indicated that it concerned situations in which a prosecutor, having closed preparatory proceedings, filed a case with a court with a motion to discontinue proceedings due to a perpetrator's insanity and to apply a preventive measure; thus, when a court's judgment that could be adopted on trial as well as at a session took a form of a ruling, which could be subject to a complaint.[33] It was made clear that it was the exception to the rule that a cassation appeal should be available only against final appellate court judgments closing a procedure. Moreover, it was emphasised that cassation in such a case could be filed only against a ruling 'upholding a judgment accepting a prosecutor's motion to discontinue proceedings and apply preventive measures laid down in Article 93 CC or in Article 94 CC and not against any final appellate court's judgment on the mater. The requirements stipulated in Article 519 *in fine* CPC must be cumulatively fulfilled. Thus, a party has no right to a cassation appeal against a negative ruling, i.e. dismissing a prosecutor's motion, and against a ruling partly accepting the motion and discontinuing proceedings but lacking a judgment on the application of a preventive measure laid down in Article 93 CC or in Article 94 CC'.[34] The last sentence of the provisions referred to above raises doubts because Article 324 § 2 CPC, in the wording of the Act of 10 January 2003 amending the Act: Criminal Procedure Code, the Act: Provisions implementing the Criminal Procedure Code, the Act on crown witnesses and the Act on the protection of classified information,[35] does not authorise a court to adjudicate on discontinuance of proceedings if it cannot find grounds for the application of a preventive measure.[36]

---

[31] D. Miszczak, gloss on the Supreme Court ruling of 30 August 2007, II K 25/07, OSP 2008, No. 5, item 57.

[32] Dz.U. 2013, item 1247.

[33] Justification for the Bill, Sejm of the Republic of Poland, 8th term, paper No. 870, www.sejm.gov.pl., pp. 104–105.

[34] *Ibid*.

[35] Dz.U. 2003, No. 17, item 155.

[36] The Supreme Court ruling of 13 August 2013, V KK 176/13, LEX No. 1350336; K. Eichstaedt, *supra* n. 2, pp. 75–94.

The opinion was also presented earlier in connection with the former legal state.[37] A cassation appeal is available only against a judgment concerning the discontinuance of proceedings and application of a preventive measure. The use of the conjunction 'and' indicates the necessity of joint occurrence of those aspects, i.e. the discontinuance of proceedings and the application of a preventive measure.

The style of the amended Article 519 CPC is inappropriate in the sense that the literal interpretation of the phrase 'final appellate court's judgment on the discontinuance of proceedings and application of a preventive measure' should lead to a conclusion that it is a situation in which an appellate court issues such a judgment. However, it would be competent to do that only in the case of issuing a reforming judgment, i.e. changing a ruling appealed against, which has dismissed a motion to discontinue proceedings and apply a preventive measure, and adjudicating diversely. In other cases, the role of an appellate court consists in upholding a judgment appealed against or quashing it; and this former solution was subject to an amendment extending the scope of cassation cognition by the Supreme Court.[38]

The legislative intention concerning the objectives of the amendment was obvious. The situation existing for many years was unacceptable from the point of view of equal possibility of exercising the procedural interest concerning parties' access to a cassation appeal in proceedings in which the same judgments were issued. Admitting a cassation appeal in relation to a judgment on the discontinuance of proceedings and placement in a psychiatric hospital was a right legislative solution standardising the parties' rights to a cassation appeal in such proceedings and the rules of appealing against a sentence adopted in the Supreme Court case law, based on the limitations laid down in Article 523 § 2 and § 3 CPC.

On 1 July 2015, when the Act of 20 February 2015 amending the Act: Criminal Code and some other acts[39] entered into force, Chapter X of the Criminal Code concerning preventive measures was reorganised and the normative state concerning the scope of cassation was considerably changed. The statute repealed the provisions of Articles 93 and 94 CC listed in Article 519 CPC, and the catalogue of preventive measures was determined in Article 93a § 1 and § 2 CC and extended. Reference made to the provision of Article 93a CC was placed in the content of the amended Article 519 CPC. At present, preventive measures include: electronic monitoring of residence, addiction therapy, and placement in a psychiatric hospital. In addition, a court may also rule other preventive measures in the form of orders or bans laid down in Article 39 (2)–(3) CC, i.e. a ban on holding specific posts or exercising a specific profession, or engaging in specific business activities, and a ban on driving motor vehicles (Article 93a § 2 CC). As a result, the literal interpretation of the

---

[37] The Supreme Court resolution of 23 April 2002, I KZP 7/02, OSNKW 2002, No. 7–8, item 59; R.A. Stefański, *Organ uprawniony do umorzenia postępowania przygotowawczego z powodu niepoczytalności podejrzanego w nowym kodeksie postępowania karnego*, Państwo i Prawo 12, 1997, pp. 127–132.

[38] D. Świecki, [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 2018, p. 518; the Supreme Court ruling of 20 September 2017, III KK 384/17, OSNKW 2018, No. 1, item 6.

[39] Dz.U. 2015, item 396.

presently binding Article 519 CPC leads to a conclusion that parties have the right to a cassation appeal against judgments discontinuing proceedings in which each of the above-mentioned preventive measures has been adjudicated and not only a detention-related one that the legislator was interested in while amending Article 519 CPC on 27 September 2013. As a consequence, the symmetry has been lost because in the light of the Supreme Court ruling of 30 August 2007, II KZ 25/07, in spite of the limitations laid down in Article 523 § 2 and § 3 CPC, the possibility of filing a cassation appeal in favour of a sentence discontinuing proceedings due to a perpetrator's insanity exists only in a situation when the most painful preventive measure has been applied to him/her. In order to implement the original assumptions concerning extraordinary extension of the objective scope of cassation, Article 519 CPC should, *de lege ferenda*, be narrowed by precise formulation of its content and determining that it concerns the discontinuation of proceedings and application of a preventive measure laid down in Article 93a § 1(4) CC (placement in a psychiatric hospital). Such wording would fully reflect the legislator's assumptions (making it possible to file a cassation appeal against a judgment that is comparable to the penalty of deprivation of liberty as far as its painfulness is concerned) and introduce equal rights in case of appeal in favour in relation to every type of judgment. The present shape of the discussed regulation misses the aim of the amendment of 27 September 2013 and, in the face of a broader use than it was originally assumed, it also loses its nature of the exception to the rule, in accordance with which only sentences can be subject to cassation cognition.

There is an opinion presented in literature that while it is not possible to challenge the grounds for the extension of cassation against judgments resulting in actual long-term deprivation of liberty in the form of placement in a psychiatric hospital, it is not right to apply this extension to all preventive measures. Similarly to a situation in which a party cannot appeal against an imprisonment sentence with conditional suspension of its execution, there should be no possibility of appealing against, e.g. a ban on engaging in specific business activities or a ban on driving motor vehicles.[40] There is also an opinion, according to which all preventive measures laid down in Article 93a § 1 CC should be subject to a possible cassation appeal, due to the fact that they considerably limit an individual's freedom or deprive a person of personal freedom and are applied with no time limit. Moreover, the Supreme Court case law within the scope of hearing cassation appeals concerning those matters under Article 521 CPC indicates a considerable number of infringements in the area. Only § 2 of Article 93a CC should be excluded from the scope of cassation cognition as it stipulates that an order and bans laid down in Article 39 (2)–(3) CPC are also preventive measures. The argument for such a limitation was the recognition that the above-mentioned order and bans constitute penal measures at the same time and adjudicated in this form cannot be subject to a cassation appeal.[41]

---

[40] M. Laskowski, *Kasacja obrońcy i pełnomocnika po 1 lipca 2015 r.*, [in:] P. Wiliński (ed.), *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, Warszawa 2015, p. 498 et seq.

[41] A. Sakowicz, M. Warchoł, [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2018, p. 1219.

The stand cannot be approved of. Although it is inadmissible to file a cassation appeal only because of disproportionality of a penalty (Article 523 § 1 sentence 2 CPC), with the exception of cassation filed by Prosecutor General in accordance with Article 523 § 1a CPC, the indication by the applicant filing this appellate measure that a flagrant contempt of the substantive law has occurred also in provisions on adjudicating on penalties and preventive measures, which could have considerable influence on the content of the judgment appealed against, makes cassation in this matter admissible.[42] However, taking into account the wording of Article 523 § 2, § 3 and § 4 CPC, apart from grounds determined in Article 439 CPC opening the way to a cassation appeal against sentences without limitations resulting from its direction, based on another flagrant violation of law determined in Article 523 § 1 CPC, cassation to the disadvantage may be filed against a sentence in the case of discontinuance and application of any preventive measure, and in favour, in accordance with the interpretation presented by the Supreme Court, only against the most painful measure. Comparing the admissibility of appealing against judgments issued in the matter, it is justifiable to consider whether the limits determined in Article 523 § 2 and § 3 CPC are applicable also in this area. There is an opinion expressed in the legal doctrine that admissibility of appealing against a judgment laid down in Article 519 CPC remains autonomous and independent of them, which is justified by the fact that they concern the accused in judicial proceedings, and a person who is subject to a prosecutor's motion does not have such a status.[43] Taking into account the wording of Article 380 CPC, the above-presented reasoning is not convincing. It is so because this person should be subject to analogous provisions concerning the accused, which is not excluded also based on cassation proceedings (Article 458 in conjunction with Article 518 CPC).

As far as cassation in favour against a judgment indicated in Article 519 is concerned, it is rather necessary to consider whether the subjective limitations should not be excluded in the face of the literal interpretation of the provision that by reference to Article 93a CC thoroughly determines (by listing preventive measures) the types of judgments that can be appealed against. If we assumed that it was subject to limitation pursuant to Article 523 CPC, which would result in a conclusion (as in case of sentences) that a party has the right to cassation to the disadvantage against every measure and to cassation in favour only against the detention-related one, reference to a particular provision of the Criminal Code would be useless. Thus, it should be assumed that cassation in favour against a ruling is not limited by the type of an adjudicated preventive measure, and that, in spite of the steps undertaken by the legislator to make access to cassation equal, there is still inconsistence in admissibility of a cassation appeal against judgments issued in relation to persons against whom proceedings have been discontinued and to whom a preventive measure has been applied.

The aim of the application of a preventive detention measure is to improve a perpetrator's health condition and conduct so that he/she might function in society

---

[42] For instance, the Supreme Court judgments: of 16 February 2017, II KK 361/16, LEX No. 2241388; of 10 August 2017, III KK 307/17, LEX No. 2338018.

[43] D. Świecki, [in:] D. Świecki (ed.), *supra* n. 39, p. 519.

in the way that would not pose threat to the legal order and, in case of a perpetrator placed in a psychiatric hospital, be treated in non-hospitalised conditions. The time of psychiatric hospitalisation is not determined in advance (Article 93d § 1 CC). The moment a court adjudicates, it has no possibility of thoroughly determining if and when the circumstances determining the application of this measure will disappear, in particular in what way and whether at all a perpetrator's mental health will improve. When it is recognised that there is no need to continue applying this measure, a court is obliged to issue a judgment quashing the former one (Article 93b § 2 CC). In the case of a perpetrator's placement in a psychiatric hospital, not less often than every six months, a court adjudicates on the matter of further application of the measure (Article 204 § 1 Penal Enforcement Code *in principio*).

A question is raised whether, in the case of prolonged application of this measure, cassation pursuant to Article 519 CPC is also admissible. The Supreme Court supported the restrictive interpretation of this provision and stated that this type of adjudication on the matter of prolonged application of placement in a psychiatric hospital is not listed therein, thus it is not subject to a cassation appeal.[44] The legislator makes reference only to the first adjudication on the matter by the use of a term 'application', which does not cover successive decisions, i.e. 'prolonged' application. Thus, further decisions taken in accordance with Article 204 § 1 Penal Enforcement Code are excluded from the possibility of filing a cassation appeal because they do not meet the statutory requirements (Article 519 CPC). If parties do not have the right to a cassation appeal against an appellate court's judgment upholding the decision on prolonging the application of this measure, like in the case of a reforming judgment issued by an appellate court as a result of hearing a complaint, Article 530 § 2 CPC should be applied to cassation filed against such a judgment. The provision obliges a court to dismiss a cassation appeal in the circumstances referred to in Article 429 § 1 CPC, i.e. inadmissibility *ex lege*. In the case of groundless admission of a cassation appeal, it should be left without adjudication (Article 531 § 1 CPC).[45]

Summing up, adjudication on the matter of criminal liability of an insane perpetrator closed by the discontinuance of proceedings and application of a preventive measure takes place in a different forum, and thus results in a victim's different status. The person, in the case of adjudication by way of a ruling, is deprived of the rights of a party and, as a consequence, of the right to file a cassation appeal, which should be criticised if a different situation of an auxiliary prosecutor in judicial proceedings is taken into account. The situation cannot be approved of at least from the point of view of the constitutional principle of equality before law. Parties' access to a cassation appeal against a ruling to discontinue proceedings and apply a preventive measure in the present legal state remains broad and does not match the scope of admissibility of a cassation appeal against sentences issued on

---

[44] The Supreme Court rulings: of 17 January 2017, II KZ 1/17, LEX No. 2188427; of 17 July 2019, IV KZ 29/19, LEX No. 2696929.

[45] The Supreme Court rulings: of 17 January 2017, II KZ 1/17, LEX No. 2188427; of 20 September 2017, III KK 384/17, OSNKW 2018, No. 1, item 6; of 10 April 2019, IV KK 610/18, LEX No. 2654537; of 17 July 2019, IV KZ 29/19, LEX No. 2696929; A. Partyk, *Przedłużenie pobytu podejrzanego w szpitalu psychiatrycznym nie jest kasatoryjne*, LEX/el. 2019.

the same matter. The present legal state not only raises a series of interpretational doubts mentioned above but also deprives all entities of equal rights to make use of this measure. Thus, while it is not an indispensable measure from the constitutional point of view (Article 176 para. 1 Constitution of the Republic of Poland), unequal access to it may raise reservations based on Article 32 para. 1 Constitution. From the perspective of the right aim of the amendment to Article 519 CPC, possibly the appropriate solution would be the re-assumption of the limitation laid down in Article 523 § 2 CPC in order to eliminate the above-presented discrepancies. This would also enable a victim to act as a party to the proceedings concerning a prosecutor's motion filed pursuant to Article 324 § 1 CPC and would aim to eliminate differences in this person's rights connected with the mode of conducting the proceedings and their consequence in the form of unequal access to appellate measures, including cassation.

BIBLIOGRAPHY

Augustyniak B., Eichstaedt K., Kurowski M., [in:] D. Świecki (ed.), *Kodeks postępowania karnego*, Vol. II: *Komentarz aktualizowany*, LEX/el. 2020.

Eichstaedt K., *Środek zabezpieczający w postaci pobytu w zakładzie psychiatrycznym, wątpliwości związane z orzekaniem*, Prokuratura i Prawo 12, 2016.

Glosses on the Supreme Court resolution of 25 February 2005, I KZP 35/04, OSNKW 2005, No. 2, item 14 by: K. Dudka, *Uprawnienia pokrzywdzonego do zaskarżenia postanowienia sądu wydanego w trybie art. 354 k.p.k.*, Państwo i Prawo 2005, No. 7; K. Eichstaedt, Palestra 2007, No. 3–4, item 306; D. Kaczmarska, Przegląd Sądowy 2006, No. 1, item 14; W. Marcinkowski, Wojskowy Przegląd Prawniczy 2005, No. 2, item 138; W. Sych, Przegląd Sądowy 2006, No. 3, item 132; K. Woźniewski, *Pokrzywdzony w postępowaniu sądowym na podstawie art. 354 k.p.k.*, GSP-Prz. Orz. 2005, No. 4.

Glosses on the Supreme Court ruling of 30 August 2007, II KZ 25/07, OSNKW 2007, No. 9, item 66 by: D. Miszczak, OSP 2008, No. 5, item 57; K. Sychta, Palestra 2009, No. 9–10.

Grajewski J., Rogoziński P., [in:] S. Steinborn (ed.), *Kodeks postępowania karnego. Komentarz do wybranych przepisów*, LEX/el. 2016.

Grzegorczyk T., *Kodeks postępowania karnego*, Vol. I: *Artykuły 1–467. Komentarz*, LEX 2014.

Hofmański P. (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 1999.

Kurowski M., [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. I, Warszawa 2018.

Laskowski M., *Kasacja obrońcy i pełnomocnika po 1 lipca 2015 r.*, [in:] P. Wiliński (ed.), *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, Warszawa 2015.

Paprzycki L.K. (ed.), *Komentarz aktualizowany do art. 1–424 Kodeksu postępowania karnego*, LEX/el. 2015.

Partyk A., *Przedłużenie pobytu podejrzanego w szpitalu psychiatrycznym nie jest kasatoryjne*, LEX/el. 2019.

Rogoziński P., [in:] S. Steinborn (ed.), *Kodeks postępowania karnego. Komentarz do wybranych przepisów*, LEX/el. 2016.

Sakowicz A., Warchoł M., [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2018.

Skowron B., [in:] K. Dudka (ed.), *Kodeks postępowania karnego. Komentarz*, Wolters Kluwer Polska 2018.

Stefański R.A., *Organ uprawniony do umorzenia postępowania przygotowawczego z powodu niepoczytalności podejrzanego w nowym kodeksie postępowania karnego*, Prokuratura i Prawo 12, 1997.
Stefański R.A., [in:] Z. Gostyński (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 1998.
Świecki D., [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 2018.
Świecki D., [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz aktualizowany*, Vol. I, LEX/el. 2020.
Ważny A., [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2015.
Zabłocki S., Hofmański P., *Reforma procedury karnej a Sąd Najwyższy*, [in:] P. Kardas, T. Sroka, W. Wróbel (eds), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, Vol. II, Warszawa 2012.

ADMISSIBILITY OF A CASSATION APPEAL AGAINST THE JUDGMENT ON DISCONTINUANCE OF PROCEEDINGS DUE TO A PERPETRATOR'S INSANITY AND APPLICATION OF PREVENTIVE MEASURES

Summary

The article aims to present interpretative doubts that are raised in connection with admissibility of a cassation appeal against a judgment concerning the discontinuance of proceedings and application of preventive measures, as well as to assess the latest legislative changes that result in the extension of the objective scope of cassation by judgments issued on this matter.

Keywords: criminal proceedings, cassation appeal against a ruling on the discontinuance of proceedings and application of a preventive measure, extension of the objective scope of cassation, admissibility of a cassation appeal against a ruling

PROBLEMATYKA DOPUSZCZALNOŚCI KASACJI OD ORZECZENIA O UMORZENIU POSTĘPOWANIA Z POWODU NIEPOCZYTALNOŚCI SPRAWCY I ZASTOSOWANIU ŚRODKÓW ZABEZPIECZAJĄCYCH

Streszczenie

Celem niniejszej publikacji jest przedstawienie wątpliwości interpretacyjnych, które zrodziły się na gruncie dopuszczalności kasacji od orzeczenia o umorzeniu postępowania i zastosowania środków zabezpieczających, oraz ocena ostatnich zmian legislacyjnych, skutkujących rozszerzeniem zakresu przedmiotowego kasacji o wydawane w tym przedmiocie postanowienia.

Słowa kluczowe: postępowanie karne, kasacja od postanowienia o umorzeniu postępowania i zastosowaniu środka zabezpieczającego, rozszerzenie zakresu przedmiotowego kasacji, kasacyjna zaskarżalność postanowienia

LA PROBLEMÁTICA DE ADMISIÓN DE CASACIÓN CONTRA LA RESOLUCIÓN DE SOBRESEIMIENTO DE PROCESO DEBIDO A LA INIMPUTABILIDAD DEL SUJETO Y LA APLICACIÓN DE LAS MEDIDAS DE SEGURIDAD

Resumen

El objetivo del presente artículo es presentar las dudas de interpretación en relación con la admisibilidad de la casación contra la resolución de sobreseimiento de proceso debido a la inimputabilidad del sujeto y la aplicación de las medidas de seguridad y valorar las últimas reformas que amplían el ámbito objetivo de la casación por estos motivos.

Palabras claves: procedimiento penal, casación contra la resolución de sobreseimiento del proceso y la aplicación de las medidas de seguridad, ampliación del ámbito objetivo de la casación, casación de auto

ПРОБЛЕМА ДОПУСТИМОСТИ КАССАЦИОННОГО ОБЖАЛОВАНИЯ РЕШЕНИЯ О ПРЕКРАЩЕНИИ ПРОИЗВОДСТВА В СВЯЗИ С НЕВМЕНЯЕМОСТЬЮ ПРЕСТУПНИКА И ПРИМЕНЕНИИ МЕР ПРЕСЕЧЕНИЯ, НЕ СВЯЗАННЫХ С ЛИШЕНИЕМ СВОБОДЫ

Аннотация

В статье рассмотрены интерпретационные неясности, возникающие в связи с допустимостью кассационного обжалования решения о прекращении производства и применении мер пресечения, не связанных с лишением свободы. Кроме этого, приводится оценка недавних изменений в законодательстве, приведших к расширению объекта кассационного обжалования на постановления, выносимые в подобных случаях.

Ключевые слова: уголовный процесс; кассационное обжалование постановления о прекращении производства и применении меры пресечения, не связанной с лишением свободы; расширение объекта кассационного обжалования; допустимость обжалования судебного постановления в кассационном порядке

DIE FRAGE DER ZULÄSSIGKEIT EINER KASSATIONSBESCHWERDE GEGEN DEN BESCHLUSS ÜBER DIE EINSTELLUNG EINES VERFAHRENS WEGEN UNZURECHNUNGSFÄHIGKEIT DES TÄTERS UND DIE ANWENDUNG EINER SICHERUNGSMASSREGEL

Zusammenfassung

Ziel des Artikels ist es, Auslegungszweifel im Zusammenhang mit der Zulässigkeit einer Kassationsbeschwerde gegen den Beschluss über die Einstellung eines Verfahrens und die Anwendung von Sicherungsmaßregeln darzulegen sowie eine Bewertung der jüngsten Gesetzesänderungen, die zu einer Ausweitung des Anwendungsbereichs des in Rede stehenden

Rechtsmittels der Kassationsbeschwerde um diesbezüglich ergangene Beschlüsse Entscheidungen geführt haben/zur Folge hatten.

Schlüsselwörter: Strafverfahren, Kassationsbeschwerde gegen einen Einstellungsbeschluss und die Anordnung von Sicherungsmaßregeln, Ausweitung des sachlichen Anwendungsbereichs einer Kassationsbeschwerde, Anfechtbarkeit eines Beschlusses durch Kassationsbeschwerde

LA QUESTION DE LA RECEVABILITÉ D'UN POURVOI EN CASSATION CONTRE L'ARRÊT DE NON-LIEU EN RAISON DE L'ALIÉNATION MENTALE DE L'AUTEUR ET D'APPLIQUER DES MESURES PRÉVENTIVES

Résumé

Le but de cet article est de présenter les doutes d'interprétation qui se sont posés sur la base de la recevabilité d'un pourvoi en cassation contre l'arrêt de non-lieu et d'appliquer des mesures préventives, ainsi que l'évaluation des récents changements législatifs ayant conduit à étendre la portée du pourvoi en cassation pour inclure les décisions rendues à cet égard.

Mots-clés: procédure pénale, pourvoi en cassation contre la décision de non-lieu et application d'une mesure conservatoire, extension du champ du pourvoi en cassation, recours contre la décision

PROBLEMATICA DELLA RICEVIBILITÀ DEL RICORSO PER CASSAZIONE AVVERSO LA SENTENZA DI NON LUOGO A STATUIRE PER INCAPACITÀ DI INTENDERE E DI VOLERE DELL'IMPUTATO E DI ADOZIONE DI MISURE CAUTELARI

Sintesi

Lo scopo dell'articolo è la presentazione dei dubbi interpretativi insorti sulla base della ricevibilità del ricorso per cassazione avverso la sentenza di non luogo a statuire e di adozione di misure cautelari, nonché la valutazione delle ultime modifiche legislative, che determinano l'ampliamento del campo di applicazione del ricorso per cassazione alle ordinanze emesse in tale ambito.

Parole chiave: procedimento penale, ricorso per cassazione avverso un'ordinanza di non luogo a statuire e di adozione di misure cautelari, ampliamento del campo di applicazione del ricorso per cassazione, impugnabilità con ricorso per cassazione di un'ordinanza

Cytuj jako:

Parapura D., *Admissibility of a cassation appeal against the judgment on discontinuance of proceedings due to a perpetrator's insanity and application of preventive measures [Problematyka dopuszczalności kasacji od orzeczenia o umorzeniu postępowania z powodu niepoczytalności sprawcy i zastosowaniu środków zabezpieczających]*, „Ius Novum" 2020 (14) nr 3, s. 87–106. DOI: 10.26399/iusnovum.v14.3.2020.27/d.parapura

Cite as:

Parapura, D. (2020) 'Admissibility of a cassation appeal against the judgment on discontinuance of proceedings due to a perpetrator's insanity and application of preventive measures'. *Ius Novum* (Vol. 14) 3, 87–106. DOI: 10.26399/iusnovum.v14.3.2020.27/d.parapura