

# HEALTH CONDITION OF THE ACCUSED AS A CIRCUMSTANCE PRECLUDING PROSECUTION

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## ABSTRACT

The article addresses the issue of discontinuation of proceedings due to the health condition of the accused that permanently prevents them from participating in the proceedings – based on the provision laid down in Article 17 § 1 subsection 11 of the Code of Criminal Procedure (CCP) – as a circumstance precluding prosecution. The research thesis is that the health condition of the accused may constitute grounds for discontinuing proceedings under this provision. A dogmatic legal approach and case law analysis are used to examine the issue. The doctrine and case law allow for this possibility, recognising that the poor health of the accused, due to its permanent nature, precludes the issuance of another substantive ruling concluding the proceedings. In opposition to this view, it is argued that the health condition of the accused may represent a factual obstacle preventing the conduct of proceedings and therefore provides grounds for their suspension (Article 22 § 1 CCP). Due to the strong polarisation of views on this issue, and the almost uniform case law of the Supreme Court, which holds that the health condition of the accused constitutes grounds for suspending proceedings, it is necessary for the legislature to intervene and add subsection 10a to Article 17 § 1 CCP, listing circumstances precluding prosecution, to include the health condition of the accused that permanently prevents participation in the proceedings.

Key words: serious illness, inability to participate in a proceeding, factual circumstances, legal circumstances, the accused, health condition of the accused, discontinuation of the proceeding, suspension of the proceeding

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## INTRODUCTION

The catalogue of circumstances that constitute obstacles to conducting criminal proceedings, as set out in Article 17 § 1 of the Code of Criminal Procedure (CCP), is not exhaustive in nature. This is evident from the content of subsection 11, which provides for ‘another circumstance precluding prosecution’. In the linguistic sense, the term refers to an event that prevents the initiation of prosecution, and the word ‘another’ excludes from its scope the circumstances previously listed in subsections 1 to 10 therein. From a procedural point of view, it refers to refraining from initiating a preparatory proceeding, or to discontinuing such a proceeding or trial. This premise is subsidiary in nature and applies only when there are no other grounds for discontinuing a criminal proceeding.<sup>1</sup> Such a general definition of the reasons for refusing to initiate or for discontinuing a proceeding raises doubts as to whether the phrase encompasses the health condition of the accused when it permanently prevents him or her from participating in the proceedings.<sup>2</sup>

## NATURE OF CIRCUMSTANCES PRECLUDING PROSECUTION

The content of the specific circumstances listed in Article 17 § 1(1)–(10) CCP indicates that they are both legal and factual in nature. Therefore, these circumstances are rightly classified as (1) factual and (2) legal.<sup>3</sup> The former concern the sphere of facts; thus, they involve the absence of a factual element, for example, the non-commission of an act.<sup>4</sup> The latter include circumstances that are legal in nature and are set out in the Code of Criminal Procedure (Article 17 § 1), in other statutes, for example Article 62a of the Act of 29 July 2005 on Counteracting Drug Addiction,<sup>5</sup> or in international agreements.

In the context of the above classification, the question arises whether another circumstance that precludes prosecution must be exclusively legal in nature, or may also be factual. The answer to this question is of key importance in considering whether the health condition of the accused, which clearly belongs to the factual sphere, may justify the discontinuation of proceedings. The wording of Article 17 § 1(11) CCP provides no legal basis for limiting such other circumstances to those

<sup>1</sup> Supreme Court ruling of 16 July 2024, I KO 12/24, LEX No. 3736066.

<sup>2</sup> Code of Criminal Procedure of 1928, Article 3 *in fine*, provided for the non-initiation of a proceeding or its discontinuation in the event of the occurrence of ‘another circumstance precluding prosecution’. In the doctrine, an incurable mental health condition of the accused was considered to be within the scope of the term (L. Peiper, *Komentarz do kodeksu postępowania karnego*, Kraków, 1932, p. 16).

<sup>3</sup> R.A. Stefański, in: Stefański R.A. (ed.), *System Prawa Karnego Procesowego. Postępowanie przygotowawcze*, Vol. X, Warszawa, 2016, p. 1328.

<sup>4</sup> R.A. Stefański, ‘Podstawy i przyczyny umorzenia postępowania przygotowawczego’, *Prokuratura i Prawo*, 1966, No. 2–3, pp. 11–12; S. Steinborn, in: Grajewski J. (ed.), *Prawo karne procesowe – część ogólna*, Warszawa, 2011, pp. 160–161.

<sup>5</sup> Journal of Laws of 2023, item 1939, as amended; thus, also in judgment of the Appellate Court in Warsaw of 8 October 2014, I AKa 263/14, LEX No. 1527246.

that are solely legal. It refers to circumstances other than those listed in subsections 1–10, which, as already noted, are both legal and factual in nature.<sup>6</sup>

In the literature and case law, however, circumstances precluding prosecution under Article 17 § 1(11) CCP are generally limited to legal ones. It is expressly stated that all legal obstacles preventing the initiation or continuation of proceedings fall within the meaning of ‘other circumstances that preclude prosecution’ as used in Article 17 § 1(11) CCP.<sup>7</sup> These include: abolition,<sup>8</sup> quasi-safe conduct (Article 589 §§ 1 and 2 CCP),<sup>9</sup> a co-punished act,<sup>10</sup> the consumption of a public complaint,<sup>11</sup>

<sup>6</sup> D. Krakowiak, ‘Trwała niezdolność oskarżonego do udziału w postępowaniu jako „inna okoliczność wyłączająca ściganie” (art. 17 § 1 pkt 11 k.p.k.)’, *Prokuratura i Prawo*, 2020, No. 10–11, p. 75.

<sup>7</sup> J. Kosonoga, in: Stefański R.A., Zabłocki S. (eds), *Kodeks postępowania karnego. Komentarz do art. 1–166*, Vol. I, Warszawa, 2017, p. 338; M. Rogalski, in: Artymiak G., Rogalski M. (eds), *Proces karny. Część ogólna*, Warszawa, 2012, p. 206; the Supreme Court ruling of 29 January 2025, I KK 473/24, LEX No. 3821920; the Supreme Court ruling of 27 February 2025, II KK 310/23, LEX No. 3839988; the Supreme Court ruling of 20 November 2024, IV KK 420/24, LEX No. 37814711; the Supreme Court ruling of 31 March 2016, II KK 313/15, OSNKW, 2016, No. 7, item 44; the Supreme Court ruling of 17 December 2015, III KK 200/15, Lex No. 2068069; the Supreme Court ruling of 20 January 2010, IV KK 329/09, OSNwSK, 2010, No. 1, item 119; the Supreme Court ruling of 2 October 2007, II KK 177/07, LEX No. 567690; ruling of the Appellate Court in Katowice of 2 April 2014, II AKz 131/14, LEX No. 1487179; ruling of the Appellate Court in Katowice of 16 April 2014, II AKz 151/14, LEX No. 1487272; ruling of the Appellate Court in Łódź of 15 July 2009, II AKz 417/09, LEX No. 519615.

<sup>8</sup> J. Tylman, ‘Warunki dopuszczalności postępowania karnego (przesłanki procesowe)’, in: *Nowa kodyfikacja karna. Kodeks postępowania karnego*, Vol. 14, Warszawa, 1998, p. 45; L. Wilk, ‘W sprawie uregulowania i stosowania łaski generalnej’, *Palestra*, 2002, No. 5–6, p. 34; the Supreme Court judgment of 14 September 1983, V KRN 197/83, OSNKW, 1984, No. 3–4, item 40 with approving comments by M. Cieślak, Z. Doda, *Kierunki orzecznictwa Sądu Najwyższego w zakresie postępowania karnego (lata 1984–1985)*, Warszawa, 1987 (Biblioteka Palestry), p. 39.

<sup>9</sup> T. Grzegorzczuk, ‘Zapewnienie świadkowi, biegłemu lub oskarżonemu nietykalności w procesie karnym’, *Prokuratura i Prawo*, 1996, No. 9, pp. 27–32; D. Drązewicz, ‘Quasi-list żelazny’, *Prokuratura i Prawo*, 2013, No. 11, pp. 146–158; M. Jachimowicz, ‘Quasi list żelazny’, *Gazeta Sądowa*, 2006, No. 1, pp. 24–25.

<sup>10</sup> The Supreme Court judgment of 13 June 2007, III KK 432/06, LEX No. 296722; the Supreme Court judgment of 16 November 2009, IV KK 98/09, LEX No. 553725; the Supreme Court resolution of 26 September 2002, I KZP 23/02, OSNKW, 2002, No. 11–12, item 98; judgment of the Appellate Court in Katowice of 25 June 2015, II AKa 192/15, LEX No. 1785768; judgment of the Appellate Court in Kraków of 13 November 2014, II AKa 203/14, LEX No. 1711349; judgment of the Appellate Court in Katowice of 10 February 2005, II AKa 22/05, LEX No. 147209 with a critical gloss by P. Gensikowski, *Prokuratura i Prawo*, 2007, No. 7–8, pp. 210–216; judgment of the Appellate Court in Lublin of 16 February 2001, II AKa 248/00, LEX No. 49842 with an approving gloss by M. Kulik, *Prokuratura i Prawo*, 2001, No. 10, pp. 108–117; judgment of the Appellate Court in Lublin of 16 October 2013, II AKa 192/13, LEX No. 1388875; judgment of the Appellate Court in Katowice of 19 February 2015, II AKa 513/14, LEX No. 1770354 with partly critical glosses by M. Kulik, LEX/el., 2016, and K. Nazar, *Prawo w Działaniu*, 2015, No. 23, pp. 398–404.

<sup>11</sup> T. Grzegorzczuk, ‘Wygaśnięcie prawa oskarżyciela publicznego do oskarżenia’, *Problemy Praworządności*, 1980, No. 2, p. 14; the Supreme Court resolution of 26 September 2002, I KZP 23/02, OSNKW, 2002, No. 11–12, item 98; the Supreme Court ruling of 28 October 2009, I KZP 21/09, OSNKW, 2010, No. 1, item 1 with an approving gloss by M. Rogalski, *Orzecznictwo Sądów Polskich*, 2011, No. 1, pp. 1–4; the Supreme Court judgment of 9 October 2008, V KK 252/08, OSNwSK, 2008, item 1992.

limited extradition, which includes a prohibition on prosecution and conviction for an offence not covered by the extraditing state's consent for the purpose of conducting judicial proceedings against that person, and committed before the date of rendition (Article 596 CCP),<sup>12</sup> and limitations resulting from the scope of rendition within the execution of the European Arrest Warrant (EAW), for example where a person is surrendered to Poland under an EAW concerning offences other than those being prosecuted, and who has not submitted a declaration of waiver of the principle of special protection, in accordance with Article 607e § 3(7) CCP.<sup>13</sup> Other examples include the application of disciplinary measures under military regulations (Article 658 § 1 CCP), and the voluntary disclosure to the prosecuting authority of all relevant information concerning persons involved in the commission of Nazi crimes, communist crimes, crimes committed by Ukrainian nationalists and members of Ukrainian formations collaborating with the German Third Reich, as well as other crimes against peace, humanity, or war crimes against Polish nationals between 8 November 1917 and 31 July 1990, as well as the circumstances of their commission, provided that this information makes it possible to initiate proceedings against a specific individual (Article 45(6) of the Act of 18 December 1998 on the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation).<sup>14</sup>

Such circumstances are also understood to include a pardon in the form of individual abolition.<sup>15</sup> However, this approach is flawed, as such a pardon is

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<sup>12</sup> J. Zagrodnik, in: Zagrodnik J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2024, p. 152; M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. I. Articles 1–424, Warszawa, 2024, p. 138; M. Kurowski, *Rezygnacja z oskarżania w toku postępowania sądowego w polskim procesie karnym*, Warszawa, 2019, pp. 94–97; S. Milczanowski, 'Uwagi na temat zasady specjalności jako przesłanki ekstradycyjnej', in: Bogunia L. (ed.), *Problemy prawa karnego*, Vol. XXV, Wrocław, 2009, pp. 129–145; M. Plachta, 'Głos do wyroku SA w Warszawie z dnia 14 listopada 2000 r., II AKa 336/00', *Palestra*, 2002, No. 3–4, p. 250; the Supreme Court judgment of 30 October 2019, V KK 309/19, LEX No. 3562389; the Supreme Court judgment of 3 September 2009, V KK 141/09, OSNKW, 2010, No. 2, item 15; the Supreme Court judgment of 25 June 2008, IV KK 179/08, LEX No. 438417; the Supreme Court ruling of 29 August 2006, V KK 193/06, LEX No. 196965; judgment of the Appellate Court in Katowice of 11 February 2013, II AKa 268/12, *Biuletyn Sądu Apelacyjnego w Katowicach*, 2013, No. 3, item 25; the Supreme Court judgment of 17 December 1999, IV KKN 366/99, *Prokuratura i Prawo* – supplement, 2000, No. 6, item 11.

<sup>13</sup> C. Kulesza, in: Dudka K. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2023, p. 76; M. Hotel, 'Ograniczenia w ściganiu za przestępstwa inne niż podstawa przekazania określona w europejskim nakazie aresztowania', *Palestra*, 2014, No. 11–12, pp. 46–54; M. Wasek-Wiaderek, 'Problemy stosowania zasady specjalności wobec osób przekazanych w trybie europejskiego nakazu aresztowania', in: Ślebzak K. (ed.), *Studia i Analizy Sądu Najwyższego*, Vol. 7, Warszawa, 2014, pp. 302–336; the Supreme Court ruling of 30 January 2019, V KK 7/19, LEX No. 2615128; the Supreme Court judgment of 9 May 2011, V KK 135/11, LEX No. 794538; the Supreme Court judgment of 8 December 2008, V KK 354/08, LEX No. 486535; the Supreme Court judgment of 9 May 2011, V KK 135/11, LEX No. 794538 with an approving gloss by W. Kosior, *Prokuratura i Prawo*, 2017, No. 1, pp. 156–166; ruling of the Appellate Court in Katowice of 11 February 2015, II AKz 815/14, LEX No. 1665570.

<sup>14</sup> Journal of Laws of 2023, item 102, as amended.

<sup>15</sup> K.T. Boratyńska, Ł. Chojniak, W. Jasiński, *Postępowanie karne*, Warszawa, 2012, p. 46.

inadmissible. Its application would conflict with the principle of a democratic state governed by the rule of law, as it would constitute a far-reaching interference by one of the highest state authorities in the domain of the judiciary, and would violate the principles of substantive truth, the presumption of innocence, and the principle of legalism, which is a cornerstone of Polish criminal procedure.<sup>16</sup>

The lack of a complaint by an authorised prosecutor is also incorrectly treated as such a circumstance. This situation may arise due to the absence of an accusing party, for example as a result of the death of a natural person who filed a subsidiary indictment or a private complaint, where no authorised entity succeeds to the rights of the deceased.<sup>17</sup> This ground falls within the scope of Article 17 § 1(9) CCP, which expressly provides for the lack of a complaint by an authorised prosecutor.<sup>18</sup>

The lack of a European Union Member State's request for the extradition of its citizen, despite clear evidence that the state in question is aware of extradition proceedings pending against that person in another European Union state for the purpose of extraditing them to a non-EU state to face justice or to enforce a sentence or detention order, does not constitute such a circumstance.<sup>19</sup>

The inclusion of factual circumstances within the scope of Article 17 § 1(1) CCP is rejected. It is emphasised that long-term factual reasons cannot constitute grounds for issuing a decision based on that provision, and that the appropriate solution should be sought in the suspension of proceedings under Article 22 § 1 CCP.<sup>20</sup>

It is pointed out that 'other circumstances precluding prosecution' do not include the defendant's absence from the country or any information regarding their stay in the United States,<sup>21</sup> the erroneous attribution of an act to a perpetrator when the act does not meet the elements of a prohibited act,<sup>22</sup> the existence or non-existence of a specific civil law claim,<sup>23</sup> an allegation of a violation of substantive law,<sup>24</sup>

<sup>16</sup> J. Kosonoga, in: Stefański R.A., Zabłocki S. (eds), *Kodeks...*, op. cit., pp. 330–333 and the literature referred to therein; the Supreme Court resolution of 31 May 2017, I KZP 4/17, OSNKW, 2017, No. 7, item 37 with a critical gloss by A. Rozpędowski, *Gdańskie Studia Prawnicze*, 2019, No. 1, pp. 145–153, a partly critical gloss by R. Zawłocki, *Wojskowy Przegląd Prawniczy*, 2018, No. 2, pp. 117–136, a critical gloss by M. Masternak-Kubiak, *Przegląd Sejmowy*, 2017, No. 6, pp. 238–246, and approving comments by R.A. Stefański, 'Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego procesowego za 2017 r.', *Ius Novum*, 2019, No. 3, pp. 85–89; A. Sakowicz, in: Kosonoga J. (ed.), *Studia i Analizy Sądu Najwyższego. Przegląd Orzecznictwa za rok 2017*, Warszawa, 2018, pp. 533–541.

<sup>17</sup> J. Zagrodnik, in: Zagrodnik J. (ed.), *Kodeks...*, op. cit., p. 152.

<sup>18</sup> Thus, also T. Grzegorzczak, in: Jeż-Ludwichowska M., Lach A. (eds), *System Prawa Karnego Procesowego. Dopuszczalność procesu*, Vol. 4, Warszawa, 2015, p. 380.

<sup>19</sup> C. Kulesza, in: Dudka K. (ed.), *Kodeks...*, op. cit., p. 75; the Supreme Court ruling of 5 April 2017, III KO 112/16, OSNKW, 2017, No. 8, item 47.

<sup>20</sup> Ruling of the Appellate Court in Katowice of 2 April 2014, II AKz 131/14, LEX No. 1487179.

<sup>21</sup> Ruling of the Appellate Court in Katowice of 2 April 2014, II AKz 131/14, LEX No. 1487179 with a critical gloss by D. Krakowiak, LEX/el., 2015.

<sup>22</sup> The Supreme Court ruling of 1 February 2024, III KZ 49/23, OSNK, 2024, No. 6, item 32.

<sup>23</sup> The Supreme Court ruling of 29 November 2022, III KO 78/22, LEX No. 3559467.

<sup>24</sup> The Supreme Court ruling of 18 May 2022, V KK 135/22, LEX No. 3439096.

doubts as to whether a crime was committed,<sup>25</sup> and the establishment of an additional tax liability.<sup>26</sup>

The health condition of the accused is cited as a factual circumstance, which is discussed in more detail below.<sup>27</sup>

## CLASSIFICATION OF THE HEALTH CONDITION OF THE ACCUSED AS ANOTHER CIRCUMSTANCE PRECLUDING PROSECUTION

Many publications do not include serious illness of the accused as another circumstance precluding prosecution.<sup>28</sup> Nevertheless, there are both supporting and opposing opinions in the literature and case law. This discrepancy is closely connected to the previously discussed views on the nature of circumstances precluding prosecution, leading to the discontinuation of proceedings under Article 17 § 1(11) CCP.

Such a possibility is accepted, based on the view that a long-term serious illness, which, in light of current medical knowledge, is incurable, constitutes grounds for discontinuation of proceedings. At the same time, it is noted that advances in medical science which may eventually lead to a cure do not undermine this conclusion. It is argued that the same reasoning applies to liability for an offence under Article 156 CC, where a serious incurable illness is likewise a constitutive element.<sup>29</sup> It is further argued that the accused's chronic inability to participate in trial proceedings, resulting from a persistent serious illness, ultimately blocks the process and makes the issuance of a judgment inadmissible. Therefore, the nature of this obstacle corresponds to other procedural obstacles listed in Article 17 § 1 CCP.<sup>30</sup> Utilitarian arguments are also cited in support of this view, including that conducting proceedings against a person who is permanently incapable of

<sup>25</sup> The Supreme Court ruling of 17 May 2010, IV KK 74/10, *OSNwSK*, 2010, No. 1, item 981.

<sup>26</sup> The Supreme Administrative Court judgment of 30 October 2007, I FSK 880/06, *LEX* No. 416791.

<sup>27</sup> T. Grzegorzczuk, *Kodeks postępowania karnego. Komentarz Art. 1–424*, Vol. I, Warszawa, 2008, pp. 152–153; J. Zagrodnik, in: Zagrodnik J. (ed.), *Kodeks...*, op. cit., p. 152; A. Sakowicz, in: Sakowicz A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2025, p. 29; the Supreme Court ruling of 17 August 2023, V KZ 27/23, *LEX* No. 3603306; the Supreme Court ruling of 19 October 2021, II KK 430/21, *LEX* No. 3335558.

<sup>28</sup> E.g., F. Prusak, *Postępowanie karne. Warunki dopuszczalności procesu i czynności procesowe*, Warszawa, 2002, pp. 102–104; C. Kulesza in: Kruszyński P. (ed.), *Wykład prawa karnego procesowego*, Białystok, 2012, pp. 119–120; P. Starzyński, in: Kulesza C., Starzyński P., *Postępowanie karne*, Warszawa, 2017, p. 62; J. Tylman, in: Grzegorzczuk T., Tylman J., *Polskie postępowanie karne*, Warszawa, 2022, pp. 252–253.

<sup>29</sup> T. Grzegorzczuk, *Kodeks...*, op. cit., pp. 152–153; J. Zagrodnik, in: J. Zagrodnik (ed.), *Kodeks...*, op. cit., p. 152; A. Sakowicz, in: Sakowicz A. (ed.), *Kodeks...*, op. cit., p. 29; M. Kurowski, in: Świecki D. (ed.), *Kodeks...*, op. cit., p. 138; D. Krakowiak, 'Trwała niezdolność...', op. cit., pp. 75–76; A. Piaseczny, in: Oleżałek M. (ed.), *Prawo karne procesowe dla sędziów prokuratorów, obrońców i pełnomocników*, Warszawa, 2024, p. 162; the Supreme Court ruling of 19 October 2021, II KK 430/21, *LEX* No. 3335558.

<sup>30</sup> D. Krakowiak, 'Trwała niezdolność...', op. cit., pp. 75–76.



participating in trial due to a health condition with no prospect of recovery is both pointless and wasteful. Such cases often result in proceedings lasting many years, until either the statute of limitations expires or the accused dies.<sup>31</sup> Based on a systemic interpretation, it is noted that Article 17 § 1(1) and Article 22 CCP appear in Section I, 'Introductory provisions', and that the legislator distinguishes between conditions for the admissibility of trial (Article 17 § 1 CCP) and suspension of proceedings (Article 22 § 2 CCP), which applies to obstacles that only temporarily hinder the course of a trial. Accordingly, if factual and legal circumstances that temporarily impede trial are grounds for suspension, then factual and legal circumstances that permanently and unconditionally hinder procedural activities must be grounds for discontinuation. Moreover, this stance is also supported by the purpose of defining conditions for the admissibility of criminal proceedings, which is to prevent situations where proceedings are conducted even though the issuance of a judgment in the case is not possible. If the health condition of the accused is so poor that they will never be able to participate in a trial, continuing proceedings *in absentia* would create a fiction of justice. An accused person who cannot defend themselves and is unaware of their situation, for example due to dementia, may be easily proven guilty.<sup>32</sup>

The weak point of this stance lies in the fact that its supporters have failed to develop a general definition of an illness that would constitute a circumstance precluding prosecution, and it is inconsistently specified as:

- the health condition of the accused that shows no prospect of improvement, which not only temporarily prevents the conduct of proceedings against him or her, but also excludes the possibility of conducting them in the future;<sup>33</sup>
- a cerebrovascular accident, dementia in the course of a degenerative disease of the central nervous system, etc.;<sup>34</sup>
- an irreversible serious illness of the accused, or a permanent and irreversible deterioration of the accused's health condition.<sup>35</sup>

Examples of such illnesses include a long-term non-pharmacological coma, a state following serious damage to the central nervous system that completely precludes independent functioning and the ability to communicate, and a placement in a hospice.<sup>36</sup>

Opponents of the admissibility of applying Article 17 § 1(11) CCP to serious health conditions of the accused argue that such a condition constitutes a factual obstacle preventing the conduct of proceedings, and thus provides grounds for suspending the proceedings under Article 22 § 1 CCP).<sup>37</sup> It is stated that 'other

<sup>31</sup> A. Piaseczny, in: Oleżałek M. (ed.), *Prawo karne procesowe...*, op. cit., p. 162.

<sup>32</sup> D. Krakowiak, 'Trwała niezdolność...', op. cit., p. 76.

<sup>33</sup> T. Grzegorzczak, *Kodeks...*, op. cit., pp. 152–153; J. Zagrodnik, in: Zagrodnik J. (ed.), *Kodeks...*, op. cit., p. 152; A. Sakowicz, in: Sakowicz A. (ed.), *Kodeks...*, op. cit., p. 29; the Supreme Court ruling of 19 October 2021, II KK 430/21, LEX No. 3335558.

<sup>34</sup> D. Krakowiak, *Glosa do wyroku SA z dnia 2 kwietnia 2014 r., II AKz 131/14*, LEX/el., 2015.

<sup>35</sup> D. Krakowiak, 'Trwała niezdolność...', op. cit., pp. 78 and 82.

<sup>36</sup> T. Grzegorzczak, *Kodeks...*, op. cit., p. 153.

<sup>37</sup> C. Kulesza, in: Dudka K. (ed.), *Kodeks...*, op. cit., p. 75; J. Kosonoga, in: Stefański R.A., Zabłocki S. (eds), *Kodeks...*, op. cit., p. 338; P. Misztal, in: Świecki D. (ed.), *Meritum. Postępowanie*

circumstances precluding prosecution' must be distinguished from obstacles giving rise to the suspension of proceedings (Article 22 § 1 CCP).<sup>38</sup> It is emphasised that the terms 'mental illness or other serious disease' used in this provision also encompass the most serious illnesses and terminal conditions associated with the final phase of life, but they do not provide grounds for recognising the occurrence of 'another circumstance precluding prosecution' within the meaning of Article 17 § 1(11) CCP.<sup>39</sup> This argument has been challenged, with the counterpoint that such an interpretation violates the prohibition against interpreting legal provisions in a manner that renders certain phrases redundant (*per non est*), because Article 22 § 1 CCP refers to a temporary illness, as indicated by the phrase: 'a proceeding shall be suspended for the duration of the obstacle'.<sup>40</sup>

The Supreme Court found that:

'A mental illness of the accused during a proceeding constitutes grounds for suspending it if it prevents the accused from participating in the proceeding, i.e. if, despite the participation of counsel for the defence, he is unable to control his behaviour during the proceeding, i.e. to properly understand the meaning of procedural activities and make meaningful statements; however, this inability of the accused to participate in the proceeding due to his current mental health condition may only constitute grounds for suspending the criminal proceeding under Article 22 CCP, and only for the duration of this impediment. Discontinuation of the proceeding could take place if the circumstances indicated in Article 31 § 1 CCP were indeed present, but at the time of the commission of the act.'<sup>41</sup>

'Since the legislator did not distinguish between illnesses of greater or lesser severity (in accordance with one or another criterion) within the concepts of Article 22 § 1 CCP, the interpreter is not authorised to introduce such distinctions (*lege non distinguente*). As a result, if Article 22 § 1 CCP lists serious health conditions that prevent the conduct of a trial and these include the most serious cases, i.e. terminal illnesses that result in the suspension of a proceeding, they cannot necessarily be a reason for precluding a trial, i.e. a negative procedural premise leading to discontinuation of the proceeding under Article 17 § 1(11) CCP. The opposite reasoning would imply irrationality on the part of the legislator, who would allow the same circumstance to be treated as a reason for suspending a proceeding and, at another time, as a reason for discontinuing it, depending on the discretion of the authorised procedural body.'<sup>42</sup>

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*karne*, Warszawa, 2019, p. 192; the Supreme Court ruling of 31 March 2016, II KK 313/15, OSNKW, 2016, No. 7, item 44 with approving gloss by M. Kulik, *Studia Iuridica Lublinensia*, 2017, No. 2, pp. 187–198; the Supreme Court ruling of 27 February 2025, II KK 310/23, LEX No. 3839988; the Supreme Court ruling of 20 January 2010, IV KK 329/09, OSNwSK, 2010, No. 1, item 119; the Supreme Court judgment of 18 May 1979, IV KR 92/79, OSNPG, 1979, No. 11, item 156; ruling of the Appellate Court in Katowice of 2 April 2014, II AKz 131/14, LEX No. 1487179; ruling of the Appellate Court in Katowice of 15 July 2009, II AKz 417/09, LEX No. 519615.

<sup>38</sup> P. Misztal, in: Świecki D. (ed.), *Meritum...*, op. cit., p. 192.

<sup>39</sup> The Supreme Court ruling of 31 March 2016, II KK 313/15, OSNKW, 2016, No. 7, item 44.

<sup>40</sup> D. Krakowiak, 'Trwała niezdolność...', op. cit., p. 76.

<sup>41</sup> The Supreme Court ruling of 20 January 2010, IV KK 329/09, OSNwSK, 2010, No. 1, item 119; the Supreme Court judgment of 18 May 1979, IV KR 92/79, OSNPG, 1979, No. 11, item 156.

<sup>42</sup> The Supreme Court ruling of 27 February 2025, II KK 310/23, LEX No. 3839988.



## CIRCUMSTANCES RELATED TO THE HEALTH CONDITION OF THE ACCUSED JUSTIFYING DISCONTINUATION OF THE PROCEEDING

In addressing the above-presented stances and the arguments cited in support of them, it is necessary to analyse the grounds for suspending proceedings under Article 22 § 1 CCP, insofar as they relate to the health condition of the accused. The provision refers to a mental illness or another serious disease. Article 11 § 1 *in principio* CCP states that the illness must be long-term and must prevent the conduct of a trial; both requirements must be met concurrently.<sup>43</sup> A long-term obstacle to a trial is one whose cessation is difficult to determine or is so distant that it exceeds a reasonably permissible adjournment period.<sup>44</sup> The phrase 'the proceeding shall be suspended for the duration of the obstacle' in Article 22 § 1 *in fine* CCP means that the suspension is for a defined period, the length of which depends on the reason for the suspension. This leads to the conclusion that the illness in question is not permanent, but rather transient, although it is expected to be long-term, meaning it lasts for an extended time. In any case, the period must be foreseeable in the long term. It is an obstacle that delays the trial but does not prevent the issuance of a substantive judgment.<sup>45</sup>

The situation is different when the accused is permanently unable to participate in proceedings due to a mental illness or another serious medical condition. It is true that, by means of *argumentum a maiori ad minus* reasoning, one could argue that if suspension may be applied in cases of serious illness that prevents proceedings for a period, it should be even more justified where the inability is permanent. However, this reasoning is not valid in light of the final wording of Article 22 § 1 CCP, which, as demonstrated above, implies that suspension is only applicable for a specified period. Moreover, the essence of suspension is the temporary cessation of proceedings. The word 'suspension' itself means, *inter alia*, 'stopping something for some time'.<sup>46</sup>

<sup>43</sup> The Supreme Court ruling of 5 June 2024, I ZSK 4/23, LEX No. 3738748; the Supreme Court seven judges' resolution of 28 September 2006, I KZP 8/06, OSNKW, 2006, No. 10, item 87 with approving comments by R.A. Stefański, 'Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego procesowego za 2006 r.', *Wojskowy Przegląd Prawniczy*, 2007, No. 2, pp. 135–137; the Supreme Court judgment of 8 December 1978, Rw 447/78, OSNKW, 1979, No. 5, item 59; judgment of the Appellate Court in Szczecin of 16 June 2014, II AKa 70/14, LEX No. 1532181; ruling of the Appellate Court in Rzeszów of 3 March 1992, II AKz 12/92, OSA, 1993, No. 10, item 60.

<sup>44</sup> S. Waltoś, 'Zawieszenie postępowania w świetle przepisów nowego kodeksu postępowania karnego', *Palestra*, 1970, No. 12, p. 36; Z. Gostyński, *Zawieszenie postępowania w nowym ustawodawstwie karnoprosesowym*, Warszawa, 1998, p. 30; B. Janusz-Pohl, P. Mazur, 'Zawieszenie postępowania przygotowawczego a prawnie chroniony interes pokrzywdzonego w polskim procesie karnym', *Ius Novum*, 2009, No. 3, p. 71; the Supreme Court ruling of 16 May 2024, II KZ 17/24, LEX No. 3715651; the Supreme Court ruling of 26 September 2006, SNO 50/06, LEX No. 568997; the Supreme Court judgment of 8 December 1978, Rw 447/78, OSNKW, 1979, No. 5, item 59; ruling of the Appellate Court in Kraków of 9 January 2019, II AKz 675/18, LEX No. 2707541.

<sup>45</sup> W. Daszkiewicz, *Prawo karne procesowe. Zagadnienia ogólne*, Vol. I, Bydgoszcz, 1999, p. 162.

<sup>46</sup> H. Zgólkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 49, Poznań, 2004, p. 35.

## PROPOSALS FOR RESOLVING THE PROBLEM

Due to the inadmissibility of suspending proceedings in cases where a mental or other serious illness permanently prevents the accused from participating and thereby impedes the continuation of proceedings, the position of those supporting discontinuation under Article 17 § 1(11) CCP should be accepted, as their arguments are compelling. However, this does not fully resolve the issue. Firstly, there remains a polarisation of opinions in both the literature and case law, and it is unlikely that the issue can be resolved by a resolution of the Supreme Court concerning an abstract legal issue (Article 83 of the Act of 8 December 2017 on the Supreme Court)<sup>47</sup> as it is highly probable that the Court will maintain its current position, which holds that the health condition of the accused provides only grounds for suspension of proceedings. Secondly, the health conditions referred to in this context are defined inconsistently, which does not facilitate the application of the relevant provision.

Maintaining a situation in which a long-term illness prevents the conduct of proceedings and results in their suspension leads to the need for unnecessary actions by the head of the department, who is obliged to exercise ongoing supervision over suspended cases during the suspension period (§ 80(1)(7) of the Regulation of the Minister of Justice of 17 June 2019: Rules and regulations of common courts)<sup>48</sup> as well as by the prosecutor, who is obliged to verify at least once every six months whether the reasons for suspension still persist (§ 214 of Regulation of the Minister of Justice of 7 April 2016: Rules and regulations of the internal organisational units of the prosecution service).<sup>49</sup>

In this situation, it is suggested that the issue be expressly regulated in the Code of Criminal Procedure by adding subsection 10a to Article 17 § 1, with the following wording: '10a) the health condition of the accused permanently prevents him from participation in the proceeding'. This would refer to an irreversible, permanent health condition that prevents the accused from participating in the proceedings. There is no need to specify the underlying cause of this inability, such as an illness or, more precisely, a mental or serious incurable illness, since the decisive factor for discontinuation would be the permanent inability to participate in the proceeding.

The recognition of a permanent inability to participate in the proceeding by a procedural body should be based on an expert opinion. The Supreme Court has rightly stated:

'Before formulating any categorical assessment of a particular person's health condition for the purpose of a criminal proceeding, it is necessary to strive to gather the most comprehensive and up-to-date evidence possible, which would allow the adjudicating court to properly assess this condition. In such cases, obtaining expert medical opinions that are the latest ones, in relation to the moment of determining the health condition of the accused, is a primary goal.'<sup>50</sup>

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<sup>47</sup> Journal of Laws of 2024, item 622.

<sup>48</sup> Journal of Laws of 2024, item 867, as amended.

<sup>49</sup> Journal of Laws of 2025, item 753.

<sup>50</sup> The Supreme Court ruling of 21 October 2010, V KO 90/10, *OSNwSK*, 2010, No. 1, item 2065.

## CONCLUSIONS

1. Article 17 § 1(11) CCP contains a general clause concerning a refusal to initiate or discontinue a proceeding based on another circumstance precluding prosecution. As a result of this premise, discrepancies have arisen in the literature and case law regarding the admissibility of discontinuing proceedings due to the accused's illness, defined in various ways, that permanently prevents participation in the proceedings.

2. While allowing for such a possibility, it is argued that the permanent inability of the accused to participate in a trial, resulting from an irreversible serious illness, ultimately blocks the course of the proceedings and prevents the issuance of a judgment in the case. Therefore, the nature of this obstacle corresponds to other procedural obstacles listed in Article 17 § 1 CCP.

3. In opposition to this view, it is emphasised that the accused's health condition constitutes a factual obstacle that prevents the conduct of proceedings and therefore constitutes grounds for suspension of proceedings under Article 22 § 1 CCP. The terms 'mental or another serious illness' in this provision also include the most serious and terminal conditions associated with the final phase of life.

4. The application of Article 22 § 1 CCP is not justified in such cases, as it refers to a mental or other serious illness that is long-term in nature and temporarily prevents the conduct of a trial. It does not apply where the accused is permanently unable to participate in proceedings for these reasons.

5. Neither position fully resolves the issue, due to the significant polarisation of opinions in the literature and case law. Moreover, the proponents of applying Article 17 § 1(11) CCP do not provide a precise definition of the illnesses involved.

6. As a result, the *de lege ferenda* conclusion is that the issue should be expressly regulated in Article 17 § 1 by adding subsection 10a, with the following wording: 'the health condition of the accused permanently prevents him from participation in the proceeding'.

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