

PROCEDURAL CONSEQUENCES OF THE VIOLATION OF COMMON COURTS' COMPETENCE IN CRIMINAL PROCEEDINGS

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The Constitution of the Republic of Poland¹ guarantees everybody the right to fair and public hearing of his case, without undue delay, before a competent, impartial and independent court. The cited provision not only includes the statement that "everyone shall have the right to a fair hearing of his case, without an undue delay, before a (...) court" but also defines additional features which the body entitled to adjudicate should have. It should be "competent", "impartial" and "independent".² A competent court as meant in Article 54(1) of the Constitution is a court entitled by the Constitution or a statute to adjudicate a given case.³ In accordance with Article 45(1) of the Constitution, a competent court is also a court which meets all the features of competence, guarantees the issue of a just judgement,⁴ and also

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¹ *arg. ex* Article 45(1) of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dz.U.] No. 78, item 483 as amended.

² D. Szumiło-Kulczycka, *Prawo do sądu właściwego w polskim procesie karnym i gwarancje jego realizacji* [Right to a competent court in Polish criminal proceedings and guarantees of its institution], [in:] J. Czapska, A. Gaberle, A. Świątowski, A. Zoll (ed.), *Zasady procesu karnego wobec wyzwań współczesności. Księga ku czci Profesora Stanisława Waltośa* [Principles of criminal proceedings in the face of contemporary challenges. Book in honour of Professor Stanisław Waltoś], Warsaw 2000, p. 247.

³ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland: Commentary], C.H. Beck, Warsaw 2009, p. 241.

⁴ K. Marszał, *Badanie właściwości sądu w sprawach o przestępstwa* [Research into a court's competence in criminal cases], [in:] A. Gerecka-Żołyńska, P. Górecki, H. Paluszkiwicz, P. Wiliński (ed.), *Skargowy model procesu karnego. Księga ofiarowana Profesorowi Stanisławowi Stachowiakowi* [Adversarial model of criminal proceedings. Book presented to Professor Stanisław Stachowiak], Wolters Kluwer, Warsaw 2008, p. 244.

a court determined in special regulations of a statute.⁵ In accordance with the above-presented meaning, a court's competence reflects the subjective aspect of jurisdiction, i.e. the entitlement of a particular common or special court to hear a particular case.⁶ It is important not only for organisational reasons but has consequences in the sphere of an individual's rights. The treatment of "the right to a fair hearing before a competent court" as one of an individual's constitutional rights leads to a conclusion that the competence of a court must be determined without any defects because one can bring any case before a court.⁷ The Constitution of the Republic of Poland does not regulate directly the competence of a court to adjudicate in a case. The regulation of this matter may be drawn from Article 176(2) of the Constitution, which stipulates that: "The organizational structure and jurisdiction as well as the procedure of the courts shall be specified by statute". The Criminal Procedure Code (CPC) is the statute that determines courts' competence. The provisions of the Code regulating a court's competence aim to safeguard optimum conditions for efficient operation of the justice instituting bodies on the one hand, and they are crucial from the point of view of lawfulness and guarantees for the parties to proceedings on the other hand.

It is worth mentioning that in accordance with the Constitutional Tribunal judgements, the right to have a case heard by a competent court means the necessity to tailor courts in such a way that will always make one of them competent to hear a case concerning freedoms and rights of an individual.⁸ From the perspective of a court's competence, in accordance with Article 45(1) of the Constitution, it is necessary to determine in the regulations in force which court is competent to hear a case.⁹ Thus, the regulations determining which court is competent are guarantee-related, rather than orderly in nature. This characteristic results from the constitutional right to be tried before a competent court. The right to a competent court is to constitute a guarantee that a case is appropriately heard and an adequate judgement issued. That is why, the judicial review of a given category of cases should be assigned to a court that is best prepared to adjudicate on it, due to its expertise or the position in the structure of the courts system.¹⁰

Therefore, a question arises what a court's competence is. A court's competence is explained in various ways in the literature on criminal proceedings. From the

⁵ G. Artymiak, *Realizacja prawa do sądu właściwego w sprawach karnych, jako gwarancja rzetelnego procesu. Zagadnienia wybrane* [Institution of the right to a competent court in criminal proceedings as a guarantee of a fair trial: Selected issues], [in:] J. Skorupka (ed.), *Rzetelny proces karny. Księga jubileuszowa Profesora Zofii Świdry* [Fair criminal trial. Professor Zofia Świdra jubilee book], Wolters Kluwer, Warsaw 2009, p. 249.

⁶ G. Artymiak, *Realizacja prawa do sądu...* [Institution of the right...], p. 249.

⁷ P. Sarnecki, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland: Commentary], Vol. 3, Warsaw 2003, p. 4.

⁸ See, the judgement of the Constitutional Tribunal of 10 June 2008, SK 17/07, OTK-A 2008, No. 5, item 75.

⁹ P. Wiliński, *Proces karny w świetle Konstytucji* [Criminal proceedings in the light of the Constitution], Wolters Kluwer, Warsaw 2011, p. 123.

¹⁰ See, the judgement of the Constitutional Tribunal of 10 June 2008, SK 17/07, OTK-A 2008, No. 5, item 75. See also the ruling of the Constitutional Tribunal of 6 July 2004, Ts 59/03, OTK-B 2004, No. 3, item 176.

point of view of the discussed subject matter, it is not necessary or purposeful to present the opinions of particular authors or a detailed discussion of specific typical features because it has been widely discussed in the doctrine.¹¹ Thus, it should be assumed that a court's competence is its entitlement to perform specified procedural activities or a group of such activities, which at the same time are obligatory in case a court recognises its competence.¹² Such competence concerns a crime, the place where it has been committed and other activities performed by a court. In a broader sense, a court's competence is also regulated based on the state of being an accused assigned to common courts and military courts.¹³

In the criminal proceedings doctrine,¹⁴ there are two basic types of a court's competence:

- 1) general competence that covers *ratione materiae* (reason of the matter), *ratione loci* (reason of the venue) and functional competence (jurisdiction);
- 2) special competence that covers jurisdiction arising from the conjunction of matters and jurisdiction resulting from a case transfer.

Another question arises about the issue what proceeding-related consequences result from the violation of the above-mentioned types of competence. Analysing this issue, one should mention M. Cieślak's¹⁵ division of these consequences into two groups:

- 1) absolute incompetence;
- 2) relative incompetence.

According to this author, absolute incompetence takes place where a lower-level court adjudicates in a case that is under jurisdiction of a higher-level court; and relative incompetence takes place in a reversed situation.¹⁶ Thus, another question arises concerning the issue on violation of which types of competence results in absolute incompetence.

There is no consensus of opinion on this matter in the literature on criminal proceedings. Some authors state that absolute incompetence, being an absolute reason for quashing a judgement, [in accordance with Article 439 §1(4) CPC, note by Z.K.], takes place where a lower-level court having *ratione materiae* competence under the above provision adjudicates in a case that is under jurisdiction of

¹¹ Z. Kwiatkowski, *Właściwość sądów powszechnych w sprawach karnych* [Common courts' competence in criminal cases], [in:] Z. Kwiatkowski (ed.), P. Hofmański (ed.-in-chief), *System Prawa Karnego Procesowego*. Tom V: *Sądy i inne organy postępowania karnego* [Criminal procedure law system. Vol. V: Courts and other bodies in criminal proceedings], Wolters Kluwer, Warsaw 2015, pp. 296–396.

¹² S. Waltoś, [in:] S. Waltoś, P. Hofmański (ed.), *Proces karny. Zarys systemu* [Criminal trial: System overview], Wolters Kluwer, Warsaw 2016, p. 157.

¹³ *Ibid.*

¹⁴ Z. Kwiatkowski, *Właściwość sądów powszechnych...* [Common courts' competence...], p. 300.

¹⁵ M. Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne*. Wydanie III zmienione i rozszerzone [Polish criminal procedure: Basic theoretical assumptions. 3rd edition. Revised], PWN, Warsaw 1984, p. 239.

¹⁶ M. Cieślak, *Polska procedura karna...* [Polish criminal procedure...], pp. 239–240.

a higher-level court.¹⁷ The dominating opinion¹⁸ is that “absolute incompetence constituting an absolute reason for appeal, [i.e. an absolute reason for quashing a judgement, note by Z.K.], in accordance with Article 439 §1(4) CPC, takes place where the provisions on *ratione materiae* competence are violated as well as where the provisions on functional competence are breached”. The judiciary has the same opinion on this matter.¹⁹ The above-quoted opinions deserve approval.

A court’s *ratione materiae* competence is a court’s entitlement to adjudicate in a case concerning a specified crime at the first instance level because of the type of crime. In other words, *ratione materiae* competence allows determining a court that is to hear a case at the first instance level, and thus indicates whether it is to be a district or a regional court. Based on *ratione materiae* competence, a lower-level court or a higher-level court to adjudicate at the first instance level is designated. Thus, it is vertical competence. The adequate division results from the provisions of Article 24 §1 CPC and Article 25 §1 CPC.

There is a consensus in the doctrine²⁰ and the judiciary²¹ that “what decides about a court’s *ratione materiae* competence in the course of judicial proceedings is a criminal act committed by the accused as seen in the light of circumstances of the given case and not its erroneous classification by a prosecutor in an indictment”. In criminal proceedings, a court is to conduct a formal preliminary review of an accusation and verify whether the legal classification of an act the accused is charged

¹⁷ K. Marszał, [in:] K. Marszał et al., *Proces karny. Przebieg postępowania*. Wydanie III uzupełnione [Criminal trial: Course of the proceedings. 3rd edition. Revised], Wydawnictwo Volumen, Katowice 2012, p. 296.

¹⁸ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz do artykułów 297–467*. Tom II, Wyd. IV [Criminal Procedure Code: Commentary on Articles 297–467. Vol. II, 4th edition], C.H. Beck, Warsaw 2011, p. 837; W. Grzeszczyk, *Kodeks postępowania karnego. Komentarz*. Wyd. X [Criminal Procedure Code: Commentary. 10th edition], LexisNexis, Warsaw 2014, p. 592; T. Grzegorzczak, *Kodeks postępowania karnego. Tom I: Komentarz do artykułów 1–467*. Wyd. VI [Criminal Procedure Code. Vol. I. Commentary on Articles 1–467. 6th edition], Wolters Kluwer, Warsaw 2014, p. 1483; Z. Muras, *Bezwzględne przyczyny odwoławcze w polskim procesie karnym* [Absolute reasons for appeal in Polish criminal proceedings], Toruń 2004, p. 111 and literature referred to therein; D. Świecki, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*. Tom I. Wyd. II [Criminal Procedure Code: Commentary. Vol. I. 2nd edition], Wolters Kluwer, Warsaw 2015, p. 150; S. Zabłocki, *Postępowanie odwoławcze w kodeksie postępowania karnego po nowelizacji*. Wyd. II [Appellate proceedings in the Criminal Procedure Code after the amendment. 2nd edition], Wolters Kluwer, Warsaw 2003, p. 220.

¹⁹ See, the ruling of the Supreme Court of 1 February 1989, V KRN 8/89, OSNPG 1989, No. 10, item 107.

²⁰ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], Vol. II, p. 837; W. Grzeszczyk, *Kodeks postępowania karnego...* [Criminal Procedure Code], p. 592; J. Grajewski, S. Steinborn, [in:] J. Grajewski, L.K. Paprzycki (ed.), S. Steinborn, *Kodeks postępowania karnego. Tom II: Komentarz do artykułów 425–673*, Wyd. III [Criminal Procedure Code: Vol. II: Commentary on Articles 425–673. Vol. II, 3rd edition], Wolters Kluwer, Warsaw 2013, p. 102; Z. Muras, *Bezwzględne przyczyny odwoławcze...* [Absolute reasons for appeal...], p. 112 and the opinions from the doctrine referred to therein.

²¹ See, the judgement of the Supreme Court of 14 November 1984, V KRN 371/80, OSNPG 1985, No. 7, item 101; the ruling of the Appellate Court in Poznań of 28 April 1992, II AKz 112/92, OSA 1992, Vol. 9, item 1; the judgement of the Supreme Court of 9 January 2013, V KK 382/12, LEX No. 5043059; the judgement of the Supreme Court of 23 May 2000, IV KKN 580/99, LEX No. 392267.

with in an indictment is appropriate. This is of crucial importance, especially in case of aggravated crime where, e.g. in accordance with Article 294 §1 of the Criminal Code (CC), a first instance court's competence depends on it.

Violation of a court's *ratione materiae* competence, which is an absolute reason for quashing a judgement laid down in Article 439 §1 CPC, is applicable only in one direction, i.e. only where a lower-level court adjudicates in a case under jurisdiction of a higher-level court. The provision refers to the structure of the common courts system by the mutual relationship between the "a lower-level court" and "a higher-level court". The Act of 27 July 2001: Law on the common courts system (LCCS)²² does not use the terms "a lower-level court" and "a higher-level court"; however, if we take into consideration the way in which common courts are founded, laid down in Article 10 LCCS, it is necessary to assume that, while a district court is founded for *ratione loci* competence of at least two regional courts, called "a court district", (*arg. ex* Article 10 §2 LCCS), and an appeal (appellate) court is founded for *ratione loci* competence of at least two court districts, called "an appeal area" (*arg. ex* Article 10 §3 LCCS), and a regional court is founded for one or a few communes [*gmina*] (*arg. ex* Article 10 §1 LCCS), in the common courts system a district court is a higher-level court in relation to a regional court and an appeal court is a higher-level court in relation to a district court.

The same relation exists in the structure of the military courts system, where a district military court is a higher-level court in relation to a garrison court (*arg. ex* Article 3 §1 of the Law on the military courts system, henceforth LMCS),²³ and the Supreme Court Military Chamber is a higher-level court in relation to a district military court.

However, there is not an absolute reason for quashing a judgement in accordance with Article 439 §1(4) CPC where a higher-level court adjudicates in a case under jurisdiction of a lower-level court. In such a case, the violation of a lower-level court's competence and adjudication by a higher-level court may be regarded as contempt of the procedural provisions that is a relative reason for appeal (Article 438(2) CPC), provided that a higher-level court notices its incompetence before a trial starts and, despite that fails to make an adequate decision in accordance with Article 35 §1 CPC. However, if a court's *ratione materiae* incompetence is revealed in the course of judicial proceedings, the mode of action to be taken depends on how advanced the hearing is and the bench composition. Then, a court is not obliged to transfer a case to a lower-level court because it is entitled to hear it, unless there is a need to adjourn a trial.

Thus, if a public prosecutor adopts legal classification in an indictment that indicates a district court's *ratione materiae* competence as the first instance court, but a regional court hears a case adopting legal classification in accordance with

²² Act of 27 July 2001 on Law on the common courts system (uniform text), Journal of Laws [Dz.U.] of 2015, item 133.

²³ Act of 21 August 1997 on Law on the military courts system, Journal of Laws [Dz.U.] of 2016, item 358, as amended.

a provision indicating its *ratione materiae* competence, it is not an infringement laid down in Article 439 §1(4) CPC.²⁴

Another question arises here. In what proceeding-related situations does the violation of a court's functional competence result in an absolute reason for quashing a judgement in accordance with Article 439 §1(4) CPC? Functional competence constitutes a range of activities a court is entitled to undertake. It includes *ratione materiae* competence and other activities a court is authorised to by statute.²⁵ In the literature²⁶ on criminal proceedings, it is rightly emphasised that the violation of functional competence constitutes an absolute reason for quashing a judgement in accordance with Article 439 §1(4) CPC, however, in view of the discussed issues, it is not necessary to discuss various proceeding-related situations where violation of a higher-level court's functional competence may take place. It is only required to indicate that such a situation is connected with a lower-level court's failure to observe the competence of a higher-level court.²⁷ The Supreme Court expressed this opinion in its judgement of 30 December 1983,²⁸ stating that: "In proceedings conducted in accordance with Article 368 §1 CPC, [at present Article 420 §1 CPC, note by Z.K.], a first instance court may 'supplement' only a judgement of a first instance court. Thus, if there is a need to supplement a judgement of an appeal court, it must be adjudicated by the same appeal court in accordance with Article 407 CPC, applying Article 368 §1 CPC" [at present Article 458 CPC in connection with Article 420 §1 CPC, note by Z. K.]. The opinion cited was approved of in the doctrine²⁹ but there were also some doubts concerning it.³⁰

The violation of a higher instance court's functional competence to issue a cumulative sentence is also an absolute reason for quashing a judgement in accordance with Article 439 §1(4) CPC. The competence is referred to in the doctrine³¹ as competence arising from the conjunction of matters (*forum connexitatis causarum*) and it also constitutes functional competence of a regional or a district court. Thus, if the first instance courts adjudicating were courts of different level, a higher-level court shall issue a cumulative sentence (*arg. ex* Article 569 §2 CPC). The provision should be interpreted, however, in connection with Article 569 §1 CPC, which determines a court's competence to issue a cumulative sentence by

²⁴ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], Vol. II, p. 837, and literature and the Supreme Court judgements referred to therein.

²⁵ Z. Kwiatkowski, *Właściwość sądów powszechnych...* [Common courts' competence...], p. 367 and literature referred to therein.

²⁶ D. Świecki, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki (ed.), *Kodeks postępowania karnego...* [Criminal Procedure Code...], p. 151.

²⁷ Z. Kwiatkowski, *Właściwość sądów powszechnych...* [Common courts' competence...], pp. 379–389.

²⁸ The Supreme Court judgement No. Z 167/83, OSNKW 1984, Vol. 7–8, item 83.

²⁹ S. Zabłocki, *Postępowanie odwoławcze...* [Appellate proceedings...], pp. 222–223.

³⁰ Z. Doda, A. Gaberle, *Kontrola odwoławcza w procesie karnym. Orzecznictwo Sądu Najwyższego. Komentarz. Tom. II* [Appellate review in a criminal trial: Supreme Court judgements. Commentary. Vol. II], Wolters Kluwer, Warsaw 1997, p. 212.

³¹ Z. Kwiatkowski, *Właściwość sądów powszechnych...* [Common courts' competence...], p. 377 and the opinions from the doctrine referred to therein.

referring to the existence of conditions for adjudicating a cumulative sentence towards a person validly sentenced by other courts on the one hand, and by indicating a court that issued the last first-instance sentence, on the other hand. As a consequence, this connection between §1 and §2 of Article 569 CPC means that Article 569 §2 CPC, stipulating that: “if the first instance courts that adjudicated were different-level courts, a court of a higher level issues a cumulative sentence”, does not make a higher-level court’s competence to issue a cumulative sentence dependent on meeting material and legal conditions for adjudicating a cumulative sentence by a higher-level court. This is because the fact whether these conditions occur is a matter of the assessment of which sentences and of which courts meet these conditions.³² Thus, in order to determine a court’s functional competence to issue a cumulative sentence, it is not important which penalties adjudicated in particular sentences are subject to accumulation but sentences of which courts are examined for meeting conditions laid down in Article 83 and the following CC.³³

Inappropriate interpretation of inter-polar legal norms may also be the reason for the violation of a court’s functional competence constituting contempt of Article 439 §1(4) CPC. Such a situation often took place after the presently binding Criminal Procedure Code came into force because it caused a problem of a relationship between the provisions of Articles 7 and 8 of the Act of 6 June 1997: Regulations instituting the Criminal Procedure Code.³⁴ The issue was the subject matter of a Resolution of the bench of seven judges of the Supreme Court of 30 September 1998,³⁵ where the following legal opinion was expressed: “the expression used in Article 8 sentence II of the provisions instituting the Criminal Procedure Code stating that in situations described in this provision ‘proceedings are being conducted in accordance with the provisions of the Criminal Procedure Code’ does not refer to a court’s competence but to other provisions concerning proceedings ‘being conducted’, and a court’s competence is referred to only in Article 7 of the provisions”. The stand was approved of in the literature.³⁶

Summing up the considerations so far, it is necessary to conclude that the provision of Article 439 §1(4) CPC, formulating one of the absolute reasons for appeal, [quashing a sentence, note by Z.K.], requires that there was a violation of specified provisions on a court’s *ratione materiae* or functional competence. Thus, one cannot speak about “contempt” of the provision of Article 439 §1(4) CPC but about contempt of special provisions stipulating that a particular case is subject to hearing in a higher-level court and the infringement of this provision gives grounds for quashing a judgement appealed against, regardless of the limits of the appellate

³² T. Grzegorzcyk, *Kodeks postępowania karnego oraz ustawa o świadku koronnym. Komentarz* [Criminal Procedure Code and the Act on the state’s evidence: Commentary], Wolters Kluwer, Warsaw 2008, p. 1198; see also justification for the judgement of the Supreme Court of 17 March 2010, IV KK 271/09, OSNKW 2010, Vol. 7, pp. 74–75.

³³ See, the judgement of the Supreme Court of 17 March 2010, IV KK 271/09, OSNKW 2010, Vol. 7, item 64.

³⁴ Journal of Laws [Dz.U.] No. 89, item 556.

³⁵ The Supreme Court judgement, I KZP 14/98, OSNKW 1998, Vol. 9–10, item 42.

³⁶ S. Zabłocki, *Postępowanie odwoławcze...* [Appellate proceedings...], p. 223.

measure and the influence of the infringement on the content of the judgement.³⁷ The provision of Article 439 §1(4) CPC determines only a violation concerning other provisions of the Criminal Procedure Code regulating a court's competence. The violation of these provisions results in absolute quashing of a sentence. Alone, it only, as it were, sanctions a violation of a court's *ratione materiae* or functional competence in the course of hearing a case by an adjudicating body. As it has been already discussed, everyone shall have the right to a hearing of his/her case before a competent, impartial and independent court determined by statute (*arg. ex* Article 45(1) of the Constitution of the Republic of Poland). Thus, not without reasons, the legislator assumed that, in case a perpetrator commits a crime that is a more socially harmful act where the facts and their legal status are more complex, a higher-level (district) court should adjudicate, and in case a perpetrator commits a crime that is less socially harmful and thus where the facts and their legal status are less complex, a lower-level (regional) court should adjudicate. A violation of this obligation and adjudicating by a lower-level court in a case under jurisdiction of a higher-level court is an absolute reason for quashing a judgement, regardless of this infringement's influence on the content of the judgement.

The issue of adjudicating by a common court in a case under jurisdiction of a special court or vice versa, constituting absolute reasons for quashing a judgement in accordance with Article 439 §1(3) and (4) CPC must be discussed separately. *Ratio legis* of this provision is based on strict separation of common courts from special courts.

The common courts administer justice in all matters save for those statutorily reserved to other courts (Article 177 of the Constitution of the Republic of Poland). Common courts embrace regional, district and appeal courts and they administer justice in matters that are not under the jurisdiction of administrative and military courts and the Supreme Court (Article 1 §1 and §2 LCCS). Special courts include, in accordance with the Criminal Procedure Code, only military courts, which administer justice in the Armed Forces of the Republic of Poland in criminal matters envisaged by statute and adjudicate in other matters if they are transferred to their jurisdiction in accordance with other acts (*arg. ex* Article 1 §1 LMCS). These are special courts operating as district military courts and garrison military courts (*arg. ex* Article 3 §1 LMCS). Article 12 of the Act of 6 June 1997: Regulations instituting the Criminal Procedure Code and the provisions of Article 647 CPC and Article 650 CPC lay down these courts' competence.

The Criminal Procedure Code that is in force at present strictly separates the competence of common courts and special courts, i.e. military courts. As far as common courts are concerned, there is a principle of universal competence, which means that they cannot refuse to hear a case if their competence has not been explicitly limited to a military court or another body. As far as military courts are concerned, the principle is quite the opposite. They are entitled to hear cases only

³⁷ See, the ruling of the Supreme Court of 5 March 1997, V KKN 183/96, Prokuratura i Prawo – annex 1997, No. 9, item 12.

based on the specified provision in accordance with which a case is under their jurisdiction.³⁸

In the literature³⁹ on criminal proceedings, there is an established opinion that if a case filed for the reason of the matter and a person involved is subject to hearing by a common court or a military (special) court, and there has been a violation of competence in connection with one of the co-accused or one of the acts, the provision of Article 439 §1(3) CPC constitutes grounds for quashing a part of the judgement concerning an act that is not in the competence of the given court or a person that is not under the jurisdiction of the given court. The Supreme Court expressed a different stand on this issue in its judgement of 30 April 1982,⁴⁰ stating that: "in a situation where a first instance voivodeship court has issued a judgement in a case that is under jurisdiction of a military court (Article 388(7) CPC) and a standard or extraordinary appeal has been filed against it, the Supreme Court Criminal Chamber has competence to adjudicate in accordance with Article 388 CPC". The stand has not been approved of in the literature.⁴¹

On the other hand, the Supreme Court was right to state that where a common court has adjudicated in a case under jurisdiction of a military court (Article 439 §1(3) CPC), unless the judgement is quashed, it constitutes an adjudicated matter (Article 17 §1(7) CPC), which makes hearing of the case before a competent military court impossible.⁴² This opinion has been approved of in the doctrine.⁴³

It is rightly claimed in the judicature⁴⁴ that "in case of concurrence of sentences issued by a regional court and a district military court, establishing which of these courts is competent to issue a cumulative sentence, one cannot refer to the criterion laid down in Article 569 §2 CPC because it is not applicable to a relationship between a common court and a military court, and the decision which court is competent is based on the criterion laid down in Article 569 §3 CPC". Thus, there is an infringement indicated in Article 439 §1(3) CPC because in case of concurrence of sentences issued by a regional common court and a district military court, a court that has issued a more severe sentence shall issue a cumulative sentence (*arg. ex* Article 569 §3 CPC).

Therefore, a violation of the specified type of special courts' competence and hearing a case before a common court as well as adjudicating in a case under

³⁸ S. Zabłocki, *Postępowanie odwoławcze...* [Appellate proceedings...], p. 217.

³⁹ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], Vol. II pp. 886–887; J. Grajewski, S. Steinborn, [in:] J. Grajewski, L.K. Paprzycki (ed.), S. Steinborn, *Kodeks postępowania karnego...* [Criminal Procedure Code...], p. 673; D. Świecki, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki (ed.), *Kodeks postępowania karnego...* [Criminal Procedure Code...], p. 150.

⁴⁰ The Supreme Court judgement, I KR 121/82, OSNKW 1982, Vol. 9, item 64.

⁴¹ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], Vol. II, pp. 886–887 and literature referred to therein.

⁴² See, the ruling of the Supreme Court of 4 February 1997, WZ 82/98, OSNKW 1999, No. 5–6, item 32.

⁴³ T. Grzegorzczuk, *Kodeks postępowania karnego...* [Criminal Procedure Code...], p. 1483.

⁴⁴ See, the judgement of the Supreme Court of 24 June 2004, WA 11/04, OSNKW 2004, No. 7–8, item 78.

jurisdiction of common courts by a military court constitute an absolute reason for quashing a judgement in accordance with Article 439 §1(3) CPC.

There is one more issue to discuss. It is a question in what proceeding-related situations the violation of general and special competence may be a relative reason for appeal under Article 438(2) CPC.

Analysing this issue, it must be highlighted that the provision of Article 438(2) CPC requires that there should be a causative relationship between the infringement in the proceedings and the issued judgement. Consequently, in every case it is necessary to establish whether the violation of procedural provisions on court competence might have influence on the judgement. Thus, it is rightly claimed in the doctrine⁴⁵ that the regulation laid down in Article 438(2) CPC should be deemed to be appropriate as it would be hard to recognise as convincing a solution that would allow quashing or amending a judgement, due to infringement of proceeding-related regulations that could have no impact on the content of the judgement appealed against.

Thus, analysing the issue of the violation of a specific type of court's competence from the perspective of a relative reason for appeal in accordance with Article 438 §2 CPC, first of all, it should be argued that the infringement of every type of a court's competence, i.e. general (*ratione materiae*, *ratione loci* and functional) competence as well as special competence (arising from the conjunction of matters and a transfer of a case) may constitute a relative reason for appeal in accordance with Article 438(2) CPC, unless it classified as absolute incompetence constituting an absolute reason for quashing a judgement under Article 439 §1(3) and (4) CPC.

Therefore, if a higher-level court hears a case that is in *ratione materiae* competence or functional competence of a lower-rank court, it may constitute contempt of proceeding-related regulations that is a relative reason for appeal (Article 438(2) CPC). However, when a higher-level court recognises a lower-level court as the one that has *ratione materiae* or functional competence to hear a case in the course of the first instance hearing, a transfer of a case in accordance with a court's competence may take place if there is a necessity of adjournment.⁴⁶ However, in case of *ratione loci* competence, which determines which court of the given level has *ratione materiae* and functional competence to adjudicate in a given case because of the venue where a crime was committed,⁴⁷ the recognition of its lack before a trial obliges a court to transfer the case to a court that has *ratione loci* competence (*arg. ex* Article 35 §1 CPC), and the conditions for transferring a case because of *ratione loci* incompetence are applicable to a higher-level court as well as a lower-level court. Recognition of lack of competence after a trial starts obliges a court to take the above steps only in case of a trial adjournment (*arg. ex* Article 35 §2 *in fine* CPC). This means that,

⁴⁵ K. Marszał, [in:] K. Marszał at al., *Proces karny...* [Criminal trial...], p. 233.

⁴⁶ S. Zabłocki, [in:] J. Bratoszewski, L. Gardocki, Z. Gostyński (ed.), S.M. Przyjemski, R.A. Stefański (ed.), S. Zabłocki (ed.), *Kodeks postępowania karnego. Komentarz*. Tom III [Criminal Procedure Code: Commentary. Vol. III], Wolters Kluwer, Warsaw 2004, p. 164, and opinion from the doctrine and the Supreme Court judgements referred to therein.

⁴⁷ Z. Kwiatkowski, *Właściwość sądów powszechnych...* [Common courts' competence...], p. 355 and the opinions from the doctrine referred to therein.

despite the recognition of *ratione loci* incompetence in the course of the first instance hearing, a court does not transfer a case to another court or another body if a court's competent to adjudicate is a lower-level court or a court of the same level and it is not necessary to adjourn the trial. Thus, the infringement of a court's *ratione loci* competence may also be a relative reason for appeal.⁴⁸

It is worth drawing attention to the fact that Articles 33 and 34 CPC regulate special competence (competence arising from conjunction of matters) which is an exception to *ratione loci* competence laid down in Articles 31 and 32 §1 CPC as well as *ratione materiae* competence laid down in Articles 24 and 25 §2 CPC. The infringement of the rule laid down in Article 33 §1 CPC may be a relative reason for appeal laid down in Article 438(2) CPC.⁴⁹ The provisions of Article 36 CPC and Article 37 CPC regulating special competence resulting from a case transfer may result in the change of a court's competence laid down in statute but only in relation to *ratione loci* competence.⁵⁰ Therefore, as it has been already discussed, if the infringement of a court's *ratione loci* competence may be only a relative reason for appeal, it should be assumed that the infringement of special competence resulting from a case transfer may also be a relative reason for appeal under Article 438(2) CPC. Thus, in every case of a violation of the above-mentioned types of a court's competence, it is necessary to establish whether contempt of the provisions of Article 36 CPC and Article 37 CPC may have an impact on the judgement.

The above considerations lead to a conclusion that the violation of the provisions regulating common courts' competence may result in two types of consequences: firstly, it may constitute an absolute reason for quashing a judgement in accordance with Article 439 §1(3) and (4) CPC, and secondly, it can be a relative reason for appeal laid down in Article 438(2) CPC.

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⁴⁸ J. Bratoszewski, [in:] J. Bratoszewski, L. Gardocki, Z. Gostyński, S.M. Przyjemski, R.A. Stefański, S. Zabłocki, *Kodeks postępowania karnego. Komentarz. Tom I* [Criminal Procedure Code: Commentary. Vol. I], Warsaw 2003, p. 387.

⁴⁹ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz do artykułów 1–296. Tom I, Wyd. IV* [Criminal Procedure Code: Commentary on Articles 1–296. Vol. I, 4th edition], C.H. Beck, Warsaw 2011, p. 295.

⁵⁰ P. Hofmański (ed.), E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], Vol. I, p. 304.

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PROCEDURAL CONSEQUENCES OF THE VIOLATION OF COMMON COURTS' COMPETENCE IN CRIMINAL PROCEEDINGS

Summary

The infringement of common courts' jurisdiction causes two types of effects. Firstly, it constitutes absolute non-competence, which takes place when a lower instance court adjudicates in a case that is in a higher instance court's jurisdiction or when a common court adjudicates in a case that is in a specialised court's jurisdiction, or a specialised court adjudicates in a case that is in a common court's jurisdiction. Absolute non-competence constitutes an absolute reason for appeal, i.e. an absolute reason for quashing a judgement in accordance with Article 439 § 1 (3) and (4) CPC, and takes place when material jurisdiction as well as functional competence have been infringed. Secondly, it causes an effect in the form of relative non-competence, which takes place when a higher instance court adjudicates in a case that is in a lower instance court's jurisdiction. It concerns every type of jurisdiction infringement, i.e. general jurisdiction (*ratione materiae* jurisdiction, *ratione loci* jurisdiction, functional competence) as well as special jurisdiction (related to conjunction of cases and remand of a case), and may constitute a relative reason for appeal in accordance with Article 438 (2) CPC, which causes an effect in the form of quashing or changing a judgement appealed against if it might have influence on the content of the judgement.

Key words: court's *ratione materiae* competence, court's functional competence, absolute reason for appeal, relative reason for appeal

SKUTKI PROCESOWE NARUSZENIA WŁAŚCIWOŚCI SĄDÓW POWSZECHNYCH W POSTĘPOWANIU KARNYM

Streszczenie

Naruszenie właściwości sądów powszechnych powoduje dwojakiego rodzaju skutki. Po pierwsze, stanowi niewłaściwość bezwzględna, która występuje wtedy, gdy sąd niższego rzędu orzekł w sprawie należącej do właściwości sądu wyższego rzędu, bądź sąd powszechny orzekł w sprawie należącej do właściwości sądu szczególnego, albo sąd szczególny orzekł w sprawie należącej do właściwości sądu powszechnego. Niewłaściwość bezwzględna stanowi bezwzględną przyczynę odwoławczą – bezwzględną przyczynę uchylenia orzeczenia, w rozumieniu art. 439 par. 1 pkt 3 i 4 k.p.k. i zachodzi wtedy, gdy naruszono przepisy dotyczące zarówno właściwości rzeczowej, jak i funkcjonalnej sądu. Po wtóre, powoduje skutek w postaci niewłaściwości względnej, która zachodzi wtedy, gdy sąd wyższego rzędu orzekł w sprawie należącej do właściwości sądu niższego rzędu. Dotyczy to także naruszenia każdego rodzaju właściwości, a więc zarówno właściwości ogólnej (rzeczowej, miejscowej i funkcjonalnej), jak i właściwości szczególnej (z łączności spraw i z przekazania) oraz może stanowić względną przyczynę odwoławczą, w rozumieniu art. 438 pkt 2 k.p.k., która powoduje uchylenie lub zmianę zaskarżonego wyroku, jeżeli mogła ona mieć wpływ na treść orzeczenia.

Słowa kluczowe: właściwość sądu, właściwość rzeczowa sądu, właściwość funkcjonalna sądu, bezwzględna przyczyna odwoławcza, względna przyczyna odwoławcza