

REVIEW OF RESOLUTIONS OF THE SUPREME COURT CRIMINAL CHAMBER CONCERNING CRIMINAL PROCEDURE LAW FOR 2016

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CRIMINAL PROCEDURE CODE

1. THE CONCEPT OF THE AGGRIEVED (ARTICLE 49 §1 CPC)

1.1. In the light of the crime of obtaining financial means from a bank account by deception (Article 286 §1 Criminal Code, hereinafter: CC), there is some doubt about who the aggrieved is, i.e. the bank where the account is held or the account owner. It results from the fact that, in accordance with the Civil Code, the means deposited on bank accounts constitute the bank's property, and the owner only has the right to claim its payment (Article 726 CC). The judiciary assumes that:

- 1) causing the payment of financial means by an unauthorised person and, as a consequence, emptying a bank account results in the loss in the owner's property because, in case there are no means on the account, a debt claim cannot be settled. This results in the owner's right to have claims arising from inappropriate fulfilment of a contractual obligation, and in special cases from responsibility for a prohibited act;¹
- 2) since the money paid to an unauthorised person is the bank's property, such a disposal does not debit the account of the owner, who maintains the right to

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¹ Supreme Court judgement of 8 December 2010, V CSK 163/10, LEX No. 784297; Supreme Court judgement of 4 October 2007, V CSK 255/07, LEX No. 435625; Supreme Court judgement of 16 January 2008, IV CSK 380/07, LEX No. 371419.

claim back the means deposited as the actual fulfilment of the contract obliging each of the parties.²

In the former situation, the account owner should be recognised as the aggrieved in accordance with Article 49 §1 Criminal Procedure Code (henceforth: CPC) and in the latter one, he does not have such a status.

In its ruling of 28 April 2016, I KZP 3/16,³ the Supreme Court rightly stated: **“The payment of financial means to an unauthorised person, disadvantageous for a bank, may be recognised *in concerto* as a disadvantageous disposal, in accordance with Article 286 §1 CC, also for an account owner. His legal right resulting from a bank account contract is directly infringed when the right to get back the deposited financial means on demand is not exercised before the account balance is altered. Until then, an account owner cannot dispose of the means paid to an unauthorised person, and this can have negative consequences for his property, also in terms of *lucrum cessans*. Thus, there are no grounds for a *limine* depriving an account owner of the status of the aggrieved in accordance with Article 49 §1 CPC and, as a result, the right to file an indictment under Article 55 §1 CPC when an unauthorised person, acting to gain financial benefits, caused the payment of financial means from an account by deceiving a bank representative.”**

The opinion has been partly approved of⁴ and partly criticised⁵ in the literature.

In its justification, the Supreme Court assumed that the conclusion of a bank account contract (Title XX Civil Code) results in the owner’s money transfer to a bank’s property. In accordance with Article 726 Civil Code, a bank may temporarily deal with free financial means deposited on a bank account being under an obligation to return them in full or partial amount on demand, unless the contract determines an obligation to terminate the account.⁶ The account owner gets back the possession and ownership of them or another property or obligation right that was connected with them before the deposit the moment his claim is settled by the payment of financial means concerned. Pursuant to Article 50(1) and (2) Act of 29 August 1997: Banking law (henceforth: BL),⁷ a bank account owner may freely dispose of financial means deposited on the account, unless there are clauses in the contract limiting the disposal freedom and the bank is especially diligent to ensure safe-keeping

² Supreme Court judgement of 16 January 2001, II CKN 344/00, LEX No. 52688; Supreme Court judgement of 21 June 2001, IV CKN 362/00, LEX No. 121982; Supreme Court judgement of 9 July 2008, V CSK 56/08, LEX No. 551054; Supreme Court judgement of 3 December 2008, V CSK 230/08, LEX No. 484686; judgement of the Appellate Court in Poznań of 18 April 2007, I ACa 201/07, LEX No. 446233.

³ OSNKW 2016, No. 6, item 37.

⁴ D. Krakowiak, Gloss on this ruling, LEX/el. 2016.

⁵ A. Jezusek, gloss on this ruling, OSP 2017, No. 2, item 15; Sz. Tarapata, P. Zakrzewski, OSP 2017, No. 2, item 15.

⁶ E. Niezbecka, [in:] A. Kidyba (ed.), *Kodeks cywilny. Komentarz*, Vol. III, Warsaw 2014, pp. 704–705; Z. Ofiarski, *Prawo bankowe. Komentarz*, Warsaw 2013, p. 384; Supreme Court judgement of 13 February 2004, IV CK 40/03, LEX No. 151636; judgement of the Appellate Court in Kraków of 5 February 2014, I ACa 917/12, LEX No. 1540886; judgement of the Appellate Court in Poznań of 27 October 2010, I ACa 733/10, LEX No. 756715.

⁷ Journal of Laws [Dz.U.] of 2017, item 1876, as amended.

of financial means. Thus, a crime against property in the form of financial means deposited on a bank account constitutes a crime against a bank, which is entitled to the status of the aggrieved.

Making payments from a bank account, a bank is obliged to check the genuineness and formal appropriateness of a document used to authorise the payment and the identity of a claimant (Article 65 BL). This ensures the safety of deposits as a bank takes the responsibility for payments from bank accounts at its own risk.

On the other hand, in accordance with Article 61(2) BL, it is possible to include a clause in a contract determining that an account owner shall be charged for money payments from an account resulting from an account owner's failure to report the loss of a document authorising to withdraw money from the account. However, even then a bank is not exempt from responsibility for payments if it had failed to be especially diligent.⁸

The Supreme Court drew attention to the fact that a credit entry on a bank account constitutes grounds for the account owner's claim to settle debts by a bank. In case of differences between an entry and the balance registered on the account, taking into consideration all legal action changing the balance, an account owner may effectively claim the payment of debts up to the amount entered on the account. In the event he/she challenges the appropriateness of an entry, he/she may demand that the bank changes it. However, until the balance is altered *ex tunc*, the claim to return financial means is not settled in the amount exceeding the account balance.⁹ Insufficient amount of means on the account also stops the settlement of a claim when an entry has been understated as a result of payment made to an unauthorised person. In such a case, until the account balance is altered after the differences were reported (Article 728 §3 Civil Code), an account owner cannot exercise his/her right and thus take the possession of the financial means that a bank paid to an unauthorised person or dispose of them in a different way. This means that, as a result of payment to an unauthorised person, a bank account owner has a loss in his/her obligation rights. He/she continues to possess all means deposited or obtained from other disposals. After it is proved that the payment was made to an unauthorised person and the balance is altered, the bank is obliged to settle the claim to pay the amount in accordance with the updated balance, including interest resulting from the delay, which should be recognised as equivalent to inappropriate performance of obligation (Article 471 Civil Code). Therefore, an account owner has no loss in accordance with civil law because his obligation based on a contract with a bank is not infringed. However, the object of payment temporarily remains outside the reach of an account owner's disposal, and thus outside the possibility

⁸ Supreme Court judgement of 22 November 2002, IV CKN 1526/00, OSNC 2004, No. 3, item 46; Supreme Court judgement of 9 November 2005, II CK 201/2005, LEX No. 311307; judgement of the Appellate Court in Białystok of 3 July 2003, I ACa 350/03, Orz.SA w Białymstoku 2003, No. 4, item 8; A. Kawulski, *Prawo bankowe. Komentarz*, Warsaw 2013, p. 306.

⁹ Supreme Court resolution of 29 December 1994, III CZP 162/94, OSNC 1995, No. 4, item 60; Supreme Court judgement of 8 December 2010, V CSK 163/10, OSNC-ZD 2011, No. 2, item 48; Supreme Court judgement of 4 October 2007, V CSK 255/07, OSNC-ZD 2008, No. 3, item 79; Supreme Court judgement of 9 July 2008, V CSK 56/08, LEX No. 551054; Z. Ofiarski, *Prawo bankowe...*, p. 384.

of taking possession of it until the account balance is restored by an entry reversal of the payment made to an unauthorised person. In a situation in which a bank disposed of financial means deposited on an owner's account for the benefit of an unauthorised person, the balance is changed and thus, as the Supreme Court rightly notices, an account owner loses the entitlement to efficiently settle debts equivalent to the amount paid to that person. His/her right to freely dispose of financial means within the amount in question is suspended. The payments of financial means to an unauthorised person are disadvantageous for an account owner's property rights because his/her possibilities of using financial means are suspended until the account balance is altered by an entry reversal of a payment made to an unauthorised person or consequences of other disposals he/she made and the bank settled.

It is hard to approve of the criticism of the Supreme Court's stand that, due to the fact that the interpretation of the features of crimes against property, including those concerning an attempt on legal rights, is not determined by the provisions of civil law, because criminal law has autonomy and it is admissible to attribute a different meaning to terms the legislator uses in criminal regulations from those established in civil law.¹⁰ The interpretation directives are for taking into consideration consequences of a bank account contract in the interpretation of criminal law terms connected with a bank account, and the criminal policy that motivated the legislator's developing criminal law regulations does not justify breaking this relationship.

1.2. In the context of Article 270 §1 CC, a question was raised whether the person whom a falsified document concerns has the status of the aggrieved. The Supreme Court, in its ruling of 24 August 2016, I KZP 5/16,¹¹ stated that: **"The crime specified in Article 270 §1 CC as such does not directly infringe the right of a person whose signature was falsified on a document."**

Such a description of the object of protection under Article 270 §1 CC means that a person whom a falsified or altered document concerns cannot be treated as the aggrieved. The Supreme Court's opinion is right and was approved of in the literature.¹² It is fully justified in the substantive definition of the aggrieved. As the Supreme Court rightly indicated: "The group of the aggrieved, in accordance with Article 49 §1 CPC, is limited to the set of features of an act that is subject to proceedings and concurrent acts".¹³ A person whose right, even the legally protected

¹⁰ A. Jezusek, *Glosa do postanowienia SN z dnia 28 kwietnia 2016 r., I KZP 3/16*, OSP 2017, No. 2, item 15.

¹¹ OSNKW 2016, No. 10, item 66.

¹² D. Krakowiak, gloss on this ruling, LEX/el. 2016; R.A. Stefański, *Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego materialnego za 2015 r.*, Ius Novum No. 3, 2017, pp. 212–213.

¹³ Supreme Court resolution of 15 September 1999, I KZP 26/99, OSNKW 1999, No. 11–12, item 69 with a gloss of approval by B. Mik, WPP No. 2, 2000, pp. 164–170 and a critical one by J. Długozim, GS No. 12–1, 1999/2000, pp. 24–26, and positive comments by S. Zabłocki, *Przegląd orzecznictwa Sądu Najwyższego – Izba Karneja*, Pal. No. 11–12, 1999, pp. 165–166, and R.A. Stefański, *Przegląd uchwał Izby Karnej i Wojskowej Sądu Najwyższego w zakresie prawa karnego procesowego*

one, was endangered or infringed by an act that is a crime but its protection does not belong to its statutory features is not the aggrieved. Appropriate recognition of a person who is entitled to the status of the aggrieved requires an analysis of a particular event from the point of view of the main and secondary object of protection as well as the possibility of the seeming and real concurrence of crimes and cumulative legal classification.¹⁴

Justifying this opinion, the Supreme Court rightly noticed that there is uniform case law indicating that Article 270 §1 CC protects only general rights, i.e. reliability of documents and not individual interests and related rights.¹⁵ The act harms social trust in a document as a formal method of establishing a legal relation. The provision guards that trust and threatens to punish every case of impairing social certainty that a given document belongs to the person whose signature is on it and represents his/her real will.¹⁶

At the same time, the Supreme Court pointed out that in the preparatory proceedings, the person has the procedural rights protecting his/her interests which a person reporting crime is entitled to (Article 306 §1a(3) CPC). It is because, according to Article 306 §1a(3) CPC, a complaint about a decision to discontinue an investigation can be filed by a person who reported a crime laid down in Articles 228–231, Article 233, Article 235, Article 236, Article 245, Articles 270–277, Articles 278–294 or in Articles 296–306 CC, if criminal proceedings were initiated as a result of this notification and the crime resulted in the infringement of his/her rights.

za 1999 r., WPP No. 2, 2000, pp. 88–91; Supreme Court resolution of 21 December 1999, I KZP 43/99, LEX No. 585234; Supreme Court resolution of 21 October 2003, I KZP 29/03, OSNKW 2003, No. 11–12, item 94; S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warsaw 2016, p. 188; W. Posnow, *Sytuacja pokrzywdzonego w postępowaniu przygotowawczym w polskim procesie karnym*, Wrocław 1991, p. 18; K. Dudka, *Skuteczność instrumentów ochrony praw pokrzywdzonego w postępowaniu przygotowawczym w świetle badań empirycznych*, Lublin 2006, p. 21; by this author, *Wpływ prawa karnego materialnego na ustawową definicję pokrzywdzonego*, [in:] Z. Cwiakalski, G. Artymiak (ed.), *Współzależność prawa karnego materialnego i procesowego w świetle kodyfikacji karnych z 1997 r. i propozycji ich zmian*, Warsaw 2009, pp. 138–146.

¹⁴ W. Posnow, *Sytuacja pokrzywdzonego...*, pp. 12–18 and 21.

¹⁵ Supreme Court judgement of 26 March 1960, V K 243/60, LEX No. 169746; Supreme Court judgement of 3 June 1996, II KKN 24/96, LEX No. 26352; Supreme Court judgement of 9 September 2002, V KKN 29/01, LEX No. 55220; Supreme Court judgement of 4 December 2002, III KKN 370/00, LEX No. 74375; Supreme Court judgement of 4 August 2005, II KK 163/05, Biul. PK 2005, No. 4, item 1.2.3; Supreme Court ruling of 21 June 2007, III KK 122/07, LEX No. 310185; Supreme Court judgement of 1 April 2008, V KK 26/08, Prok. i Pr. – supplement 2008, No. 7–8, item 10; Supreme Court judgement of 4 September 2008, V KK 171/08, Prok. i Pr. – supplement 2009, No. 1, item 6 with a gloss of approval by P. Iwaniuk, Prokurator 2009, No. 3–4, pp. 126–134; Supreme Court judgement of 26 November 2008, IV KK 164/08, Prok. i Pr. – supplement 2009, No. 5, item 11 with a gloss of approval by D. Jagiełło, Palestra No. 3, 2010, pp. 271–277; Supreme Court judgement of 12 January 2010, WK 28/09, OSNwSK 2010, No. 1, item 31; Supreme court ruling of 24 May 2011, II KK 13/11, Biul. PK 2011, No. 10, item 1.2.9. with a critical gloss by M. Gabriel-Węglowski, LEX/el. 2012; Supreme Court ruling of 25 March 2015, II KK 302/14, LEX No. 1666887; Supreme Court judgement of 3 October 2013, II KK 117/13, Prok. i Pr. – supplement 2014, No. 1, item 10; Supreme Court judgement of 8 January 2009, WK 24/08, OSNwSK 2009, No. 1, item 47 with a gloss of approval by D. Jagiełło, Palestra No. 3, 2010, pp. 271–277.

¹⁶ Supreme Court judgement of 17 October 1935, II K 1022/35, OSN(K) 1936, No. 5, item 182; Supreme Court judgement of 31 December 1935, III K 1493/35, OSN(K) 1936, No. 7, item 270; Supreme Court judgement of 4 March 1935, III K 1892/34, OSN(K) 1935, No. 10, item 433.

On the other hand, he/she gains the status of a party in the judicial phase of the proceedings when he/she is the aggrieved under Article 49 §1 CPC, i.e. only when the perpetrator's act also matches the features laid down in another criminal law provision classifying a crime, concurrent with or characteristic of a concurrent crime that directly endangered or infringed the person's legal right.

Therefore, in the right opinion of the Supreme Court, the conjunction of Article 306 §1 and 1a CPC and Article 49 §1 CPC unambiguously indicates that the crime consisting in falsifying a signature on a document or its use as genuine does not directly violate the legal right of a person whose signature was forged.

2. APPOINTMENT OF A DEFENCE COUNSEL ON REQUEST (ARTICLE 80A §2 CPC)

In accordance with the non-binding Article 80a §1 and 2 CPC,¹⁷ a court president, a court or a judicial officer used to appoint defence counsel in the course of court proceedings on a motion filed by the accused who had no counsel of choice, unless Article 79 §1 or §2 or Article 80 was applicable, i.e. when a defence counsel was to be appointed *ex officio* due to the circumstances justifying obligatory defence. It was also applicable to the appointment of a counsel in order to perform specified procedural activities in the course of the judicial proceedings. In the context of that provision, the Supreme Court solved the problem of the running of the strict time limit to lodge an appeal by a counsel appointed based on it.

In the ruling of 24 August 2016, I KZP 4/16,¹⁸ the Supreme Court rightly explained that: **“The appointment of a counsel *ex officio* in accordance with Article 80a §2 CPC in order to lodge an appeal (Article 444 §2 CPC) – in the wording of the provisions binding in the period from 1 July 2015 till 14 April 2016 – imposes on a court an obligation to deliver the counsel a copy of a sentence with its justification, from which moment the running of the strict time limit to lodge an appeal starts, even if the appointment took place after the deadline for lodging an appeal by the accused.”**

The problem, regardless of the fact that Article 80a CPC was repealed, remains up-to-date because it also concerns the appointment of a defence counsel *ex officio* in case of the attorney-at-law obligation. The opinion of the Supreme Court is in compliance with the case law concerning a cassation appeal. The Court stated that in case of the appointment of a counsel *ex officio* to lodge a cassation appeal, the 30-day time limit started from the moment when the appellate court judgement with its justification was delivered to him.¹⁹

¹⁷ The provision was repealed by Article 1(15) Act of 11 March 2016 amending the Act: Criminal Procedure Code and some other acts, Journal of Laws [Dz.U.] of 2016, item 437.

¹⁸ OSNKW 2016, No. 10, item 65.

¹⁹ Supreme Court ruling of 11 September 1996, II KZ 45/96, OSNKW 1996, No. 11–12, item 86; Supreme Court ruling of 26 February 2002, III KZ 87/01, LEX No. 51806; Supreme Court ruling of 12 December 2008, IV KZ 82/08, OSNKW 2009, No. 3, item 22; Supreme Court

The Supreme Court rightly referred to the grammatical interpretation of Article 140 and Article 445 §1 CPC. In accordance with the former, judgements which statute stipulates should be delivered to the parties are also delivered to a defence counsel, proxies and statutory representatives. In accordance with the latter, the time limit to lodge an appeal accounts for 14 days and runs for every entitled person from the date of delivery of the sentence with its justification. It is logical that the appointment of a counsel in order to develop an appeal results in the counsel's entitlement to lodge it and it is possible only when a copy of the first instance court's sentence with its justification is delivered to him.

3. COMPLAINT ABOUT SEIZURE OF THINGS VS THE COURSE OF PREPARATORY PROCEEDINGS (ARTICLE 236 §1 CPC)

In its ruling of 29 November 2016, I KZP 7/16,²⁰ the Supreme Court assumed that: **"Incidental proceedings initiated by a complaint pursuant to Article 236 §1 CPC about seizure of things, being heard pursuant to Article 329 §1 CPC and Article 467 §2 CPC, do not give rise to a possibility of blocking the initiation of preparatory proceedings or stopping their course."**

The opinion is justified. The Court rightly noticed that the hearing of a complaint pursuant to Article 236 §1 CPC about a decision made or an activity performed in preparatory proceedings is an incidental court activity in these proceedings. The main criminal proceedings run independent of the adjudication on a complaint.

4. CONDITIONAL TEMPORARY DETENTION (ARTICLE 257 §2 CPC)

Applying temporary detention in accordance with Article 257 §2 CPC, a court may make a proviso that the measure will be changed the moment bail is pledged, no later than in a specified deadline. On a substantiated motion lodged by the accused or his defence counsel by the last day of the given time limit at the latest, a court may extend the time limit. It is called conditional temporary detention because its change depends on the bail.²¹

It is a subsequent condition; the moment the bail is pledged, at a given deadline at the latest, temporary detention ends and is changed into bail. This moment a preventive measure changes *ex lege* from temporary detention into bail.

ruling of 18 November 2009, II KZ 54/09, OSNKW 2010, No. 1, item 9; Supreme Court ruling of 12 December 2012, V KZ 84/12, LEX No. 1235919.

²⁰ OSNKW 2016, No. 12, item 83.

²¹ R.A. Stefański, *Środki zapobiegawcze w nowym kodeksie postępowania karnego*, Warsaw 1998, p. 44; K. Eichstaedt, [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. I, Warsaw 2013, p. 782; T. Grzegorzczak, *Kodeks postępowania karnego. Komentarz*, Vol. I, Warsaw 2014, p. 920; K.T. Boratyńska, [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warsaw 2016, p. 631; J. Skorupka, [in:] J. Skorupka (ed.), *Kodeks postępowania karnego. Komentarz*, Warsaw 2018, p. 579.

In the light of this provision, there is a doubt whether it is admissible, in accordance with Article 462 §1 CPC, to cease the implementation of a decision on conditional temporary detention after the payment of a sum determined in this decision.

The Supreme Court, solving the problem in its seven judges' ruling of 25 February 2016, I KZP 18/15,²² expressed an opinion that: **"The implementation of a proviso laid down in Article 257 §2 CPC may be ceased, in accordance with Article 462 §1 in fine CPC, also after the bail bond is posted (specified sum payment, security deposit, mortgage establishment or another form of encumbrance) until the bail is pledged, i.e. the bail is accepted in the form laid down in Article 143 §1(9) CPC."**

The opinion was both criticised²³ and approved of²⁴ in the literature.

Prima vista, it might seem that the Supreme Court opinion is inaccurate because Article 257 §2 CPC refers to the moment of bail pledging and this phrase is associated with payment of a specified sum or another bail bond posting. However, justifying its opinion, the Supreme Court pointed out important reasons for its interpretation of the provision. It highlighted that Article 257 §2 CPC lays down that the change of temporary detention takes place "the moment (...) specified bail is pledged" and its appropriate interpretation constitutes the core of the problem because this is the moment when a protective measure in the form of temporary detention changes *ipso iure* into bail.

In the literature, the moment is specified in different ways as it is assumed that it refers to:

- bail acceptance;²⁵
- bail pledging, without detailed determination of the moment;²⁶
- a specified sum payment with emphasis placed on the release of the accused from a remand prison;²⁷
- bail bond posting.²⁸

In case law, it is also assumed that the moment bail starts to substitute for temporary detention is, in accordance with Article 257 §2 CPC, the time when the bail sum is paid.²⁹

²² OSNKW 2016, No. 4, item 24.

²³ J. Izydorczyk, gloss on this ruling, OSP No. 11, 2016, item 101, T. Kanty, gloss on this ruling, OSP No. 9, 2017, item 84; M. Borodziuk, OSP No. 11, 2017, item 114.

²⁴ K. Eichstaedt, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, *Kodeks postępowania karnego*, Vol. I: *Komentarz aktualizowany*, LEX/el. 2017, thesis 10 to Article 257.

²⁵ L.K. Paprzycki, [in:] L.K. Paprzycki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. I, Warsaw 2013, p. 809; T. Grzegorzczak, *Kodeks...*, p. 920.

²⁶ R.A. Stefański, *Środki zapobiegawcze...*, pp. 44–45; J. Izydorczyk, *Stosowanie tymczasowego aresztowania w polskim postępowaniu karnym*, Kraków 2002, pp. 145, 147; W. Grzeszczyk, *Kodeks postępowania karnego. Komentarz*, Warsaw 2014, p. 331.

²⁷ K. Eichstaedt, [in:] B. Augustyniak, M. Kurowski, D. Świecki, *Kodeks...*, Vol. I, p. 782.

²⁸ R.A. Stefański, [in:] R.A. Stefański, S. Zabłocki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warsaw 2004, pp. 89–90; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz*, Warsaw 2007, p. 1159; K.T. Boratyńska, [in:] A. Sakowicz (ed.), *Kodeks...*, p. 631; J. Skorupka, [in:] J. Skorupka (ed.), *Kodeks...*, p. 579; K.J. Pawelec, *Środki zapobiegawcze – nowe uregulowania w Kodeksie postępowania karnego. Zagadnienia podstawowe*, Monitor Prawniczy No. 17, 2015, pp. 910–911.

²⁹ Ruling of the Appellate Court in Lublin of 1 October 2008, II AKz 432/08, LEX No. 500260.

The Supreme Court approved of the opinion in the above-mentioned ruling and pointed out that in case of such bail, the provisions of Articles 266–270 CPC are applicable, and as a result, the phrases “bail pledging” (Article 257 §2 CPC) and “bail bond passing” (Article 266 §2 CPC), because of the ban on a synonymous interpretation,³⁰ cannot be given the same meaning. In addition, the comparison of the content of Article 257 §2 and Article 266 §2 CPC indicates that the term “bail bond passing” consists in a real act of the accused or a third person that is an expression of their will constituting an element of bail and being a condition *sine qua non* for establishing a preventive measure in the form of bail. Due to the fact that bail withdrawal is effective the moment new bail is accepted, the application of another preventive measure or abandonment of such a measure (Article 269 §3 CPC), the requirement should be referred to the act of “bail pledging”, which is also preceded by a typical declaration of will in the form of “bail bond passing”. Its acceptance by legal bodies, which must be formally recorded (Article 143 §1(9) CPC), is such an act. The moment of “specified bail pledging” is the end of the procedure of writing a report on bail pledging, which, what is really of key importance in this case, all the persons involved must sign (Article 150 §1 CPC). Another argument, in the Supreme Court’s opinion, is that bail ensures an appropriate course of the proceedings. It may be efficient only when there is a possibility of ruling that there should be forfeiture or collection of financial values or liabilities being the bail bond in case the accused impedes criminal proceedings (Article 268 §1 CPC or Article 269 §2 sentence 2 CPC). To make it possible, it is required, in accordance with Article 268 §2 CPC, that the person pledging bail be informed about the circumstances justifying the forfeiture of the bail bond or the collection of the bail sum (Article 268 §1, Article 269 CPC). Only when the person released on bail flees or hides, impedes the criminal proceedings or fails to serve punishment, the person pledging bail must face the risk of losing the bail bond. The lack of such information does not allow ruling that there should be forfeiture of the bail bond, even if an adjudicating court had grounds for assuming the person pledging bail knew the adequate regulations.³¹

Therefore, the Supreme Court is right that bail, adjudicated in accordance with Article 257 §2 CPC, may constitute a real guarantee of an appropriate course of criminal proceedings in case there is a legally admissible possibility of ruling that there should be the forfeiture of the bail bond. It is possible not at the moment when the bail bond is passed but at the moment of its acceptance, the element of which is informing the person pledging bail.

In this state of things, it is possible to cease the execution of the decision, unless bail is accepted. Thus, it is rightly indicated in case law that: “When an appellate court hears a prosecutor’s complaint about a decision on conditional extension of temporary detention after the fulfilment of the condition stated therein, i.e. after the payment of the specified bail sum by the accused or a third person in accordance

³⁰ L. Morawski, *Wykładnia w orzecznictwie sądów. Komentarz*, Toruń 2002, pp. 144–145; by this author, *Zasady wykładni prawa*, Toruń 2006, pp. 103–104.

³¹ Supreme Court ruling of 2 March 2001, V KKN 543/00, LEX No. 51924.

with Article 257 §2 CPC, the need to revoke the condition referred to in Article 257 §2 CPC, which an appellate court perceives, may result in the issue of a ruling that temporary detention of the accused should be applied again".³²

5. COMPLAINT AGAINST A PROSECUTOR'S DECISION INCLUDING A REQUEST THAT A BANK PROVIDE INFORMATION CONSTITUTING BANK SECRECY (ARTICLE 301 §2 CPC)

A bank is obliged to provide information constituting bank secrecy on a prosecutor's request in connection with criminal proceedings concerning an offence or fiscal offence (Article 105(1.2b) BL³³). In the context of this provision, there is an issue concerning the possibility of a bank's complaining against this decision. It resulted from an opinion presented in the literature that it is non-appealable,³⁴ and the judiciary admitted it.³⁵ The Supreme Court, in its resolution of 30 March 2016, I KZP 21/15,³⁶ explained that: **"A prosecutor's decision including a request that a bank, in accordance with Article 105(1.2b) Act of 29 August 1997: Banking law (uniform text, Journal of Laws [Dz.U.] of 2015, item 128, as amended), provide information constituting bank secrecy referred to in Article 104(1) of this Act is subject to a bank's complaint, provided a bank questions the imposition of obligations going beyond the scope that the prosecutor was entitled to impose in accordance with the above-mentioned legal grounds (Article 302 §1 CPC). The direct superior of that prosecutor is competent to deal with the complaint (Article 302 §3 CPC)."**

The stand was criticised in the literature.³⁷ However, the Supreme Court's opinion is right and was substantiated in detail in its abundant and careful justification.

6. APPELLATE COURTS' LEGAL QUESTIONS (ARTICLE 441 §1 CPC)

Before adjudicating on a legal matter referred to it in accordance with Article 441 §1 CPC, the Supreme Court in general examines admissibility of the question and expresses its opinion on the grounds for referring a specific legal question by an appellate court. The Supreme Court rightly highlighted that:

- "In the criminal procedure doctrine and the abundant Supreme Court case law, pursuant to Article 441 CPC, it is pointed out that referring a legal issue to the Supreme Court for fundamental interpretation depends on the fulfilment of a few conditions. Firstly, it must occur in the course of adjudicating an appeal

³² Ruling of the Appellate Court in Wrocław of 10 June 2011, II AKz 230/11, LEX No. 821162.

³³ Journal of Laws [Dz.U.] of 2017 item 1876, as amended.

³⁴ M. Gabriel-Węglowski, *Glosa do postanowienia SA w Katowicach z dnia 2 września 2009 r., II AKz 590/09, LEX/el. 2013*; M. Siwek, *Glosa do postanowienia SA w Katowicach z dnia 2 września 2009 r., II AKz 590/09, LEX/el. 2011*.

³⁵ Ruling of the Appellate Court in Katowice of 2 September 2009, II AKz 590/09, LEX No. 519635.

³⁶ OSNKW 2016, No. 5, item 28.

³⁷ M. Gabriel-Węglowski, gloss on this resolution, LEX/el. 2016.

measure by a court. Secondly, the issue must include a significant problem concerning the interpretation of a provision that is interpreted in different ways in the judicial practice, or a provision that is formulated in a defective or unclear way. Thirdly, in the given case, there must be a necessity of “a fundamental interpretation of statute”, i.e. a situation in which a provision allows various interpretations, which might be disadvantageous for the operation of law in practice. Fourthly, there must be a relationship between the legal issue and facts established in the case, which means that the explanation of interpretational doubts is indispensable for judging in the case (...). The referring of a legal question as an exception to the rule laid down in Article 8 §1 CPC, i.e. the principle of a criminal court’s judicial independence, must be preceded by a court’s attempt to eliminate the interpretational doubts raised in the course of operational interpretation (...). The mode laid down in Article 441 CPC does not serve appellate courts as a means to check if their interpretation is right with the assistance of the Supreme Court”,³⁸

- “The provision of Article 441 §1 CPC constituting the grounds for an appellate court’s question to the Supreme Court concerns a procedural measure, which is an exception to the rule concerning an appellate court’s judicial independence. An appellate court should, first of all, interpret the provisions concerned on its own, and only then, in the event it cannot resolve interpretational doubts, it can ask the Supreme Court to provide a fundamental interpretation of statute. However, if the request is to result in a resolution, certain conditions laid down in Article 441 §1 CPC must be fulfilled in accordance with the interpretation of this provision presented in the literature and expressed in numerous Supreme Court judgements. First of all, the referred legal question should arise in the course of adjudication on an appeal measure. Secondly, it must require the fundamental interpretation of statute, which means that the issue is strictly legal in nature and concerns an essential interpretation problem, i.e. a provision or provisions that are or may be differently interpreted in judicial practice, are defectively or unclearly formulated and in addition concern important issues that are of key importance for the appropriate understanding and application of law. Finally, there must be a direct relationship between the issue referred to and the case adjudicated on by an appellate court. In other words, even important and real issues requiring fundamental interpretation must also be important for the adjudication on an appeal measure. Therefore, these cannot be issues important for the functioning of law in practice but abstract in nature”,³⁹
- “The provision of Article 441 §1 CPC is exceptional in nature in comparison to Article 8 §1 CPC laying down the principle of an adjudicating court’s judicial independence. Thus, it must be precisely interpreted. It is evidently inadmissible to apply this instrument when a question does not concern the reality of a given case, especially if an appellate court fails to sufficiently examine all related objective problems from the sphere of facts and law. The questions referred to the

³⁸ Supreme Court ruling of 30 March 2016, I KZP 23/15, OSNKW 2016, No. 3, item 19.

³⁹ Supreme Court ruling of 28 April 2016, I KZP 24/15, OSNKW 2016, No. 7, item 4.

Supreme Court in accordance with Article 441 §1 CPC cannot include even those problems that are extremely important for the operation of law in practice but are abstract in nature”;⁴⁰

- “In the consistent and well-established case law concerning this subject matter, the Supreme Court repeatedly indicated grounds for admissibility of legal questions referred to the Supreme Court in accordance with Article 441 §1 CPC, assuming that the efficient referring of a legal question by an appellate court takes place only when all the conditions laid down in the provision are jointly fulfilled. Therefore, legal questions should be formulated only when a legal issue arises in the course of adjudicating on an appeal measure, i.e. there is an important problem connected with the interpretation of a provision that is differently interpreted or the provision is defectively or unclearly formulated”.⁴¹

7. VALID COURT’S RULING CONCLUDING PROCEEDINGS (ARTICLE 521 §1 CPC)

The Minister of Justice-Prosecutor General, the Ombudsman or the Children’s Ombudsman, in accordance with Article 521 §1 and §2 CPC, may file a cassation appeal against every valid court’s ruling concluding proceedings, however the last body may do this only in case the ruling violates children’s rights. The appeal may be against a “valid court’s ruling concluding proceedings”, which raises doubts whether it covers a court’s ruling to maintain in force a decision on discontinuing an investigation or enquiry.

There is no doubt that a court’s ruling to maintain in force a prosecutor’s decision to discontinue preparatory proceedings in the *in personam* phase has such a nature because due to the *ne bis in idem* ban, it is not possible to carry out proceedings in connection with the same act committed by the same person (Article 17 §1(11) CPC).⁴² Such discontinuance makes it impossible to prosecute a person if the proceedings are resumed (Article 327 §2 CPC) or to quash a valid decision by the Prosecutor General (Article 328 CPC)⁴³; this results in *actio popularis* assumption (Article 17

⁴⁰ Supreme Court ruling of 24 August 2016, I KZP 5/16, OSNKW 2016, No. 10, item 66.

⁴¹ Supreme Court ruling of 28 January 2016, I KZP 12/15, OSNKW 2016, No. 4, item 25.

⁴² R.A. Stefański, [in:] R.A. Stefański (ed.), *System Prawa Karnego Procesowego. Postępowanie przygotowawcze*, Vol. X, Warsaw 2016, pp. 1376–1377.

⁴³ Supreme Court judgement of 6 November 2003, II KK 5/03, OSNwSK 2003, item 2360; Supreme Court ruling of 26 August 2004, I KZP 11/04, OSNKW 2004, No. 7–8, item 84; Supreme Court judgement of 18 January 2006, IV KK 378/05, OSNwSK 2006, item 163; also M. Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne*, Warsaw 1984, pp. 305–313; by this author: *Glosa do wyroku SN z dnia 17 lipca 1973 r., V KRN 264/73*, OSPiKA No. 7–8, 1974, pp. 362–364; Z. Doda, A. Gaberle, *Kontrola odwoławcza w procesie karnym. Orzecznictwo Sądu Najwyższego. Komentarz*, Vol. II, Warsaw 1997, pp. 184–185; R.A. Stefański, *Podstawy i przyczyny umorzenia postępowania przygotowawczego*, Prok. i Pr. No. 2–3, 1996, p. 31; J. Tylman, [in:] T. Grzegorzczuk, J. Tylman, *Polskie postępowanie karne*, Warsaw 2014, p. 190; M. Siewierski, [in:] J. Bafia, J. Bednarzak, M. Flemming, S. Kalinowski, K. Kempisty, M. Siewierski, *Kodeks postępowania karnego. Komentarz*, Warsaw 1971, p. 55; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks...*, Vol. I, 2007, p. 152; M. Rogalski, *Wygaśnięcie prawa do oskarżenia na skutek prawomocnego umorzenia postępowania przygotowawczego*,

§1(1) CPC).⁴⁴ It differs in case of discontinuation of preparatory proceedings into a case (*in rem*) because then it is possible to resume discontinued proceedings at any time, although the decision on the discontinuation has been maintained in force by a court.⁴⁵ The Supreme Court expressed the opinion that: "A valid court's ruling to maintain in force a prosecutor's decision to discontinue an investigation at the *in rem* phase is a ruling concluding preparatory proceedings, which opens the possibility to appeal against a court's ruling by way of extraordinary cassation appeal, in accordance with Article 521 §1 CPC".⁴⁶ According to the justification, a valid decision to discontinue preparatory proceedings issued at the *in rem* phase creates a specific legal state and has impact on the situation of various entities involved in the concluded proceedings. It constitutes a formal obstacle to undertaking further procedural activities and continuation of preparatory proceedings. Therefore, until the given decision is present in legal relations, it cannot be treated as lacking legal significance and not binding on a prosecutor.

However, the resolution of seven judges of the Supreme Court of 29 November 2016, I KZP 6/16,⁴⁷ does not share this opinion and rightly provides that: "**A court's ruling issued in accordance with Article 306 §1a CPC in conjunction with Article 325a §2 CPC maintaining in force a prosecutor's decision to discontinue preparatory proceedings at the *in rem* phase is not a valid court's ruling concluding the proceedings in the meaning of Article 521 §1 CPC.**"⁴⁸

The opinion was criticised in the literature⁴⁹ with a comment that in case of discontinuance of preparatory proceedings at the *in rem* phase, the only point is formal validity, i.e. the ruling cannot be challenged by way of an appeal measure.⁵⁰

Justifying its opinion, the Supreme Court rightly pointed out that in the light of the regulation included in Chapter 11 CPC, it is obvious that a ruling maintaining in force a prosecutor's decision to discontinue an investigation or enquiry has the form of a decision that concludes preparatory proceedings, and thus is a court's ruling referred to in Article 521 §1 CPC, regardless of the fact whether the proceedings were discontinued at the *in rem* or *in personam* phase. However, it is doubtful whether it is valid in the meaning of this provision. Considering this issue, the Supreme Court, first of all, referred to the concept of "validity" as such and mentioned that validity is treated in the literature as a factor determining procedural decisions' strength, which results in ensuring legal stability⁵¹ and means a legal situation characterised

[in:] T. Grzegorzcyk, J. Izydorczyk, R. Olszewski (ed.), *Z problematyki funkcji procesu karnego*, Warsaw 2013, p. 189; R.A. Stefański, [in:] *System...*, Vol. X, p. 1405.

⁴⁴ For more see, R.A. Stefański, [in:] *System...*, Vol. X, pp. 1405–1407.

⁴⁵ J. Skorupka, [in:] J. Skorupka (ed.), *Kodeks...*, p. 73; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks...*, Vol. I, 2007, p. 152; Supreme Court ruling of 4 May 2006, V KK 384/05, LEX No. 294295; Supreme Court judgement of 9 October 2008, V KK 252/08, OSNwSK 2008, No. 1, item 1992.

⁴⁶ Supreme Court judgement of 3 December 2015, II KK 272/15, LEX No. 1938676.

⁴⁷ OSNKW 2017, No. 1, item 1.

⁴⁸ Thus, in the ruling of the Supreme Court of 26 January 2017, V KK 63/16, LEX No. 2195675.

⁴⁹ A. Jezusek, gloss on this resolution, OSP 2017, No. 6, item 61.

⁵⁰ M. Rogalski, *Stan rzeczy osądzonej*, [in:] M. Jeż-Ludwichowska, A. Lach (ed.), *System Prawa Karnego Procesowego. Dopuszczalność procesu*, Vol. IV, Warsaw 2015, pp. 632–633.

⁵¹ A. Murzynowski, *Prawomocność orzeczeń sądowych jako przesłanka kasacji*, [in:] S. Waltoś, A. Gaberle (ed.), *Środki zaskarżenia w procesie karnym. Księga pamiątkowa ku czci prof. Zbigniewa*

by unchallengeable procedural decisions.⁵² Taking into consideration the division of validity into the formal one, consisting in inability to challenge a procedural decision by way of proceedings continuation, and the substantive one, expressed as inability to challenge a decision meaning a ban on conducting new proceedings in the same matter (*ne bis in idem*),⁵³ the Supreme Court decided that the issue of potential reversibility of rulings becomes especially significant. In its opinion, only irreversible decisions can become valid in the relevant meaning from the point of view of provisions concerning extraordinary appeal measures. Rulings that a procedural body is entitled to change or quash at any time, regardless of the fact whether they are subject to ordinary appeal measures, are characterised by such considerable instability that it is difficult to assign to them the quality of validity.⁵⁴

In jurisprudence, it is assumed that the decisions to discontinue preparatory proceedings *in rem* have incomplete validity,⁵⁵ only formal validity,⁵⁶ limited validity⁵⁷ or defective validity, which does not result in all their effects.⁵⁸ The Supreme Court drew attention to the fact that if formal validity is to express the principle of certainty and inability to challenge rulings, it is necessary to exclude from the category of a prosecutor's decisions that may become valid those that the body responsible for this stage of the proceedings can quash or modify independently at any time, regardless of the right to appeal against them in general and even in a particular case. This only means that the adjudication is not impossible to be appealed against and does not constitute a ban *ne bis in idem* or does not produce an effect in the sphere of "internal" validity, since it is not an obstacle to conducting proceedings that have formerly been discontinued.⁵⁹ This is so because a prosecutor, in accordance with Article 327 §1 CPC, may restart such proceedings as he is not bound by the flow of time and is not dependent on the occurrence of new facts or law-related circumstances. In the Supreme Court's opinion, a decision to discontinue proceedings does not put an end to preparatory proceedings and a criminal trial in a given case. Just a decision to discontinue preparatory proceedings at the *in rem* phase as well as a court's ruling maintaining in force such a decision do not constitute even a relatively stable obstacle to continue proceedings and they do not implement a guarantee function of the ruling that has been issued as a result of examination of an appeal measure.

A practical argument may be added to this: there is no sense in initiating an extraordinary cassation procedure if the same effect may be achieved in a simpler way, i.e. by restarting preparatory proceedings that have formerly been discontinued.

Dody, Kraków 2000, p. 193; M. Rogacka-Rzewnicka, *Kasacja w polskim procesie karnym*, Warsaw 2001, p. 159.

⁵² S. Waltoś, P. Hofmański, *Proces karny...*, p. 62.

⁵³ M. Cieślak, *Polska procedura...*, p. 370.

⁵⁴ R. Kmieciak, *O reasumpcji wadliwych decyzji nie kończących postępowania przygotowawczego*, NP No. 7–8, 1980, p. 100 ff.

⁵⁵ J. Tylman, [in:] J. Tylman, T. Grzegorzczak, *Polskie postępowanie...*, pp. 190–191.

⁵⁶ A. Gaberle, *Umorzenie postępowania przygotowawczego w polskim procesie karnym*, Warsaw 1972, p. 164.

⁵⁷ E. Skrętowicz, [in:] R. Kmieciak, E. Skrętowicz, *Proces karny. Część ogólna*, Warsaw 2009, p. 230.

⁵⁸ S. Steinborn, *Prawomocność części orzeczenia w procesie karnym*, Warsaw 2011, p. 40.

⁵⁹ *Ibid.*, p. 92.

8. AWARDING PARTIAL COST IN CASES INITIATED BY PUBLIC PROSECUTION (ARTICLE 630 CPC)

In accordance with Article 630 CPC, in cases initiated by public prosecution, if the accused has not been sentenced for all crimes with which he was charged, the State Treasury should cover the expenditures connected with the prosecution for the crime that the accused has been acquitted of or which has been subject to proceeding discontinuation.

In case law, it was assumed that the provision refers only to expenditures, and expenditures incurred by the State Treasury, in accordance with Article 616 §2 CPC, are classified as court costs. On the other hand, Article 616 §1 CPC stipulates that the trial costs are court costs and justified expenditures of the parties, including those connected with the appointment of a single defence counsel. As a result, the expenditures incurred by the accused for the defence counsel are not classified as court costs, to a partial refund of which the accused is entitled pursuant to Article 630 CPC in case of his partial acquittal. Therefore, in case of a partial acquittal, the accused is not entitled to a refund of expenditures incurred for defence.⁶⁰

There was also an opinion that: "Article 630 CPC should constitute grounds for adjudicating justified expenditures incurred by the accused, including the appointment of the counsel, in case of acquittal of the accused of some of the charges or partial discontinuation of proceedings".⁶¹ It is emphasised that in Article 632 *in principio* CPC, the legislator laid down the proviso that refers to acquittal of the accused of all the charges or discontinuation of the whole proceedings, and thus there are no rational grounds for such narrowing interpretation of this provision.⁶²

In the resolution of seven judges of 28 January 2016 r., I KZP 16/15,⁶³ the Supreme Court held that: "**Expenditures connected with prosecution referred to in Article 630 CPC are also expenditures incurred by the accused in connection with the appointment of a single counsel of choice. In case of partial acquittal of the accused or partial discontinuation of proceedings against him, he may claim from the State Treasury a partial return of these costs.**"⁶⁴

It is a justified opinion and was rightly approved of in the literature.⁶⁵

Justifying this opinion, the Court pointed out that a phrase used in Article 630 CPC "expenditures connected with prosecution" covers the costs the accused

⁶⁰ Judgement of the Appellate Court in Katowice of 14 September 2011, II AKz 613/11, LEX No. 1102938; ruling of the Appellate Court in Szczecin of 20 October 2010, akt II AKA 104/10, Orz. SA w Szczecinie 2011, No. 3, pp. 44–46. Also S. Steinborn, [in:] L.K. Paprzycki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warsaw 2013, pp. 1532–1533; K. Eichstaedt, [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warsaw 2013, p. 1481.

⁶¹ Ruling of the Appellate Court in Szczecin of 20 May 2015, II AKz 163/15, Prok. i Pr. – supplement 2016, No. 7–8, item 44.

⁶² Ruling of the Appellate Court in Wrocław of 16 December 2011, II AKz 523/11, Prok. i Pr. – supplement 2013, No. 9, item 36.

⁶³ OSNKW 2016, No. 2, item 10.

⁶⁴ Also, judgement of the Appellate Court in Katowice of 1 December 2016, II AKA 375/16, LEX No. 2202526.

⁶⁵ Z. Rudzińska-Bluszcz, gloss on this resolution, *Palestra* No. 4, 2016, pp. 117–120; M. Kolendowska-Matejczuk, gloss on this resolution, *OSP* No. 5, 2016, item 46.

incurred for defence in connection with charges which have been incurred in the proceedings later discontinued or of which the accused has been acquitted. The purpose-related interpretation is for the assumption that in such a case it is justified to reimburse the costs incurred by the accused in order to appoint a single defence counsel within the scope in which he has been acquitted or the proceedings against him discontinued.

ACT OF 6 APRIL 1990 ON THE POLICE

9. FILING A WRITTEN MOTION TO A DISTRICT COURT TO ORDER SURVEILLANCE (ARTICLE 19(1) OR (3) OF THE ACT ON THE POLICE)

In urgent cases, if it might result in the loss of information or removal of or damage to traces of crime, in accordance with Article 19(3) Act of 6 April 1990 on the Police,⁶⁶ the Chief Commander of the Police, the Commander of the Central Investigation Bureau of the Police, or a Commander of the Voivodeship Police Force, having obtained a prosecutor's consent, may decide to initiate surveillance and file a motion to a competent district court to issue a ruling concerning thereof. The provision gives authorisation to the Chief Commander of the Police, the Commander of the Central Investigation Bureau or a Commander of the Voivodeship Police Force; however, there is no information whether they can delegate that entitlement to their deputies.

In its ruling of 28 January 2016, I KZP 12/15,⁶⁷ the Supreme Court expressed the opinion that: **“The statutory entitlement of the Chief Commander of the Police to file a written motion to a district court to order surveillance, in accordance with Article 19(1) or (3) Act of 6 April 1990 on the Police (uniform text, Journal of Laws [Dz.U.] of 2015, item 355, as amended), may be exercised by his deputies (Article 5 item 4, Article 6g and Article 7 item 4 Act on the Police).”**

The opinion should be approved of and it is how it is actually assessed in the literature.⁶⁸

In the justification, the Court emphasised that following only the instruments of linguistic interpretation, one should assume that, e.g. only the Chief Commander of the Police is authorised to file an effective motion referred to in the discussed provision. However, the Supreme Court pointed out that it had already expressed its opinion that the entitlement to file written motions to a court to order or prolong surveillance is not only the Chief Commander's and the Border Guard Units Commanders' power but also their deputies' and the Border Guard officers', provided they are authorised to act on their behalf.⁶⁹ The Court also stated that:

- the statutory entitlement of the Minister of Justice to delegate a judge, with his consent, to perform his duties in another court may be exercised by his deputy

⁶⁶ Journal of Laws [DZ.U.] of 2017, item 2067, as amended; hereinafter: Act on the Police.

⁶⁷ OSNKW 2016, No. 4, item 25.

⁶⁸ J. Kudła, gloss on this ruling, LEX/el. 2016.

⁶⁹ Supreme Court ruling of 4 September 2015, III KK 76/15, OSNKW 2015, No. 11, item 91.

or the Secretary of State or the Undersecretary of State, provided the Minister has authorised them;⁷⁰

- it is admissible that all functions of the Prosecutor General, including the filing of a cassation appeal and an extraordinary appeal, are performed by his deputies because it directly results not only from the Act on Public Prosecution but also the essence of the function of a deputy who always acts on behalf of a single-person body, which the Prosecutor General is, and not on their own;⁷¹
- a person is authorised to sign a cassation on the Ombudsman's behalf in his absence, i.e. as a substitute for him.⁷²

The Supreme Court rightly pointed out that the opinions are also applicable to the Chief Commander of the Police and his deputies because the Act on the Police lays down permanent posts of a Deputy Commander and Assistant Commanders of the Police. Thus, the Act on the Police is the basis of the deputies' powers to act on behalf of the Chief Commander of the Police and perform tasks within his competences.⁷³

ACT OF 13 OCTOBER 1995: HUNTING LAW

10. PROVISIONS BINDING IN CASES CONCERNING REQUESTS THAT A RESOLUTION EXCLUDING A PLAINTIFF FROM MEMBERSHIP IN A HUNTING ORGANISATION BE QUASHED (ARTICLE 33(6) HUNTING LAW)

In accordance with Article 33(6) Act of 13 October 1995: Hunting law,⁷⁴ in cases concerning exclusion from membership in a hunting organisation, becoming a member or losing the status of a member of the Polish Hunting Association, after the exhaustion of internal procedures or with regard to rulings and decisions conclu-

⁷⁰ Resolution of the full bench of the Supreme Court of 14 November 2007, BDA-4110-5/07, OSNKW 2007, No. 12, item 85, OSNKW 2008, No. 3, item 23 with a gloss of approval by B. Mik, Prok. i Pr. No. 6, 2008, pp. 164–176; Supreme Court judgement of 23 November 2007, WA 46/07, OSNKW 2008, No. 1, item 11 with a gloss of approval by W. Marcinkowski, WPP No. 2, 2008, pp. 131–137.

⁷¹ Judgement of seven judges of the Supreme Court of 25 September 1992, WRN 97/92, OSP 1993, No. 11, item 219; judgement of seven judges of the Supreme Court of 22 January 2003, WK 48/02, OSNKW 2003, No. 3–4, item 31 with a gloss of approval by A. Bojańczyk, Prok. i Pr. No. 6, 2004, pp. 116–124; Supreme Court judgement of 2 December 2010, II KK 236/10, LEX No. 694540; R.A. Stefański, *Podmioty uprawnione do wnoszenia kasacji nadzwyczajnych w sprawach karnych*, WPP No. 2, 2000, pp. 28–39. Differently, in case of the Chief Military Prosecutor (Supreme Court ruling of 8 October 2002, WK 33/02, PiP 2003, No. 2, p. 127 with critical glosses by S.M. Przyjemski and M. Rogacka-Rzewnicka, PiP No. 2, 2003, pp. 127–130, J. Krawiec, WPP No. 1, 2003, pp. 127–133, R.A. Stefański, OSP No. 6, 2003, pp. 343–346).

⁷² Supreme Court ruling of 30 June 2004, III KK 63/04, LEX No. 110555; J. Kulesza, *Przegląd orzecznictwa sądowego w sprawach należących do właściwości IPN – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu (prawo karne procesowe)* (part II), No. 5–6, Palestra 2006, pp. 333–342.

⁷³ Thus, also A. Łyżwa, M. Tokarski, [in:] A. Świerczewska-Gasiorowska, M. Tokarski, L. Czebotar, A. Michałek, Z. Gądzik, A. Łyżwa, *Ustawa o Policji. Komentarz*, Warsaw 2015, p. 246.

⁷⁴ Journal of Laws [DZ.U.] of 2017, item 1295; hereinafter: Hunting law.

ding disciplinary proceedings, parties to the proceedings have the right to appeal to a regional court within the period of 14 days from the date of the decision receipt. Since statute does not determine the type of proceedings to be applied to hear the appeal, a doubt was raised whether the provisions of the civil or criminal procedure law should be applied to deal with the appeal against the loss of membership in a hunting organisation, becoming a member or losing the status of a member of the Polish Hunting Association, and with regard to rulings and decisions concluding disciplinary proceedings.

In the ruling of 30 March 2016, I KZP 22/15,⁷⁵ the Supreme Court stated that: **“In the judicial proceedings initiated by an appeal filed to a regional court, in accordance with Article 33(6) Act of 13 October 1995: Hunting law (uniform text, Journal of Laws [Dz.U.] of 2015, item 2168, as amended), concerning the loss of membership in a hunting organisation, becoming a member or losing the status of a member in the Polish Hunting Association resulting from a resolution of a competent hunting organisation, the provisions of the Act of 17 November 1964: Code of Civil Procedure (Journal of Laws [Dz.U.] No. 43, item 296, as amended) are applicable. On the other hand, in the judicial proceedings initiated by an appeal against a ruling or a decision concluding disciplinary proceedings, the provisions of the Act of 6 June 1997: Criminal Procedure Code (Journal of Laws [Dz.U.] No. 89, item 555, as amended) are applicable.”**

The opinion should be approved of, however, it is partially criticised in the literature.⁷⁶

Justifying his opinion, the Supreme Court assumed that the acquisition or loss of membership in the Polish Hunting Association, provided it does not result from a disciplinary court ruling, as well as the loss of membership in a hunting organisation are cases having the features of civil ones, and thus a court should hear them pursuant to the provisions of the Code of Civil Procedure.

On the other hand, the application of the criminal procedure to hear the appeal against a ruling or a decision issued by a disciplinary hunting court results from Article 35s(2) Hunting law, in accordance with which, in cases not regulated in Chapter 6a concerning disciplinary liability, the regulations of the Criminal Procedure Code are applied, respectively. Since numerous issues are not regulated in statute, many provisions of the Criminal Procedure Code are applicable in proceedings conducted by disciplinary bodies and hunting courts.

Proceedings before a district court initiated by an appeal against a ruling issued by a hunting court, the Supreme Court states, are a follow-up of the formerly started disciplinary proceedings and they should also be conducted with the application of the criminal procedure regulations.

⁷⁵ OSNKW 2016, No. 6, item 35.

⁷⁶ M. Kościelniak-Marszał, gloss on this ruling, OSP 2017, No. 6, item 62.

ACT OF 23 NOVEMBER 2002 ON THE SUPREME COURT

11. SPECIFIC QUESTIONS OF THE SUPREME COURT
(ARTICLE 59 ACT ON THE SUPREME COURT)

If the Supreme Court, hearing a cassation appeal or any other appeal measure, has doubts concerning interpretation of law, it may adjourn the case hearing and refer a legal question to the bench of seven judges of the Supreme Court (Article 59 Act on the Supreme Court).⁷⁷ The Supreme Court adjudicating the legal question asked in this mode often points out the conditions that must be fulfilled to answer it.

In the resolution of 29 November 2016, I KZP 6/16,⁷⁸ the Court rightly highlighted that: **“In the light of the provision of Article 59 Act on the Supreme Court, in order to refer a legal question to the enlarged bench of this Court, it is necessary for it to have serious doubts concerning the interpretation of law while hearing a cassation appeal by an ordinary bench and to indicate that eliminating those doubts by an enlarged bench is essential for adjudicating on a cassation appeal (...). In accordance with the provision of Article 59 Act on the Supreme Court, one of the grounds for referring a legal question to an enlarged bench of the Court is a serious doubt concerning the interpretation of law.”**

12. ABSTRACT QUESTIONS (ARTICLE 60 §1 AND §2 ACT
ON THE SUPREME COURT)

In case there are differences in interpretation of law in common courts, military courts or the Supreme Court case law, in accordance with Article 60 §1 Act on the Supreme Court, the First President of the Supreme Court may refer a motion to a bench of seven judges of the Supreme Court to adjudicate on them. Also, the Ombudsman and the Prosecutor General as well as the General Counsel to the Republic of Poland (Prokuratoria Generalna Rzeczypospolitej Polskiej), the Children’s Ombudsman, the President of the Social Dialogue Council, the Chairman of the Polish Financial Supervision Authority (KNF) and the Financial Ombudsman may file such a motion (Article 60 §2 Act on the Supreme Court).

In the context of this provision, the Supreme Court draws attention to the following:

- **“The basic condition for asking the Supreme Court an abstract legal question and then adopting a resolution is not just the occurrence of a difference in case law, especially that resulting from different application of law as such, but exclusively a difference in the interpretation of a particular provision or provisions”**,⁷⁹

⁷⁷ Journal of Laws [(DZ.U.) of 2016, item 1254, as amended; hereinafter: Act on the Supreme Court.

⁷⁸ OSNKW 2017, No. 1, item 1.

⁷⁹ Ruling of seven judges of the Supreme Court of 25 February 2016, I KZP 18/15, OSNKW 2016, No. 4, item 24.

- “Therefore, it does not concern a difference in case law resulting from different application of law, i.e. the establishment of legal consequences of specific facts and their classification from the point of view of a particular sanctioned norm, but a difference in the interpretation of the provisions of law, i.e. activities aimed at appropriate establishment of the meaning of particular provisions by decoding different norms resulting from them”,⁸⁰
- “In order to effectively refer the abstract legal question, it is necessary to show not only a difference occurring in case law but also that the difference results from different interpretation of law by courts. Possible differences between case law and the doctrine are of minor importance.”⁸¹

ACT OF 17 JUNE 2004 ON COMPLAINTS ABOUT VIOLATION
OF A PARTY’S RIGHT TO A HEARING IN PREPARATORY
PROCEEDINGS CONDUCTED OR SUPERVISED BY A PROSECUTOR
AND JUDICIAL PROCEEDINGS WITHOUT UNDUE DELAY

13. COMPLAINT OF A PARTY WHOSE RIGHT TO A HEARING
WITHOUT UNDUE DELAY HAS BEEN INFRINGED AS A RESULT
OF ACTION OR INACTION OF A PROSECUTOR SUPERVISING
PREPARATORY PROCEEDINGS (ARTICLE 1(1) ACT ON COMPLAINTS)

Pursuant to Article 2(1a) in conjunction with (1) of the Act of 17 June 2004 on complaints about violation of a party’s right to a hearing in preparatory proceedings conducted or supervised by a prosecutor and judicial proceedings without undue delay,⁸² a party may file, inter alia, a motion to establish that the preparatory proceedings complained about have infringed the right to a hearing without undue delay in case the proceedings aimed at issuing a decision concluding the proceedings in the case last longer than necessary to determine important factual and legal circumstances. In order to establish whether lengthiness of the proceedings really took place, it is especially necessary to assess punctuality and appropriateness of activities undertaken by a prosecutor conducting or supervising preparatory proceedings aimed at concluding the preparatory proceedings (Article 2(2) Act on complaints). Article 1(1) of the above Act stipulates that a complaint is applicable when a party’s right to a hearing without undue delay has been infringed as a result of action or inaction of a court or a prosecutor conducting or supervising preparatory proceedings. Therefore, a condition for admissibility of a complaint about lengthiness of preparatory proceedings conducted by a financial body for preparatory proceedings is its supervision by a prosecutor. Thus, it is important to determine the moment

⁸⁰ Resolution of seven judges of the Supreme Court of 28 January 2016, I KZP 13/15, OSNKW 2016, No. 3, item 17.

⁸¹ Resolution of seven judges of the Supreme Court of 29 November 2016, I KZP 10/16, OSNKW 2016, No. 12, item 79.

⁸² Journal of Laws [DZ.U.] of 2016, item 1259 as amended; hereinafter: Act on complaints.

when the supervision starts, especially whether the prolongation of proceedings by a prosecutor is his supervisory action.

It was assumed in case law that a prosecutor's decision to prolong an investigation in accordance with Article 153 §1 sentence 3 Fiscal Penal Code (henceforth: FPC) is not an activity of a technical nature only, but a basic supervisory activity, because a refusal to prolong an investigation would conclude the preparatory proceedings, while a decision to prolong it has an impact on the efficiency of the proceedings, determines its lengthiness and, as a result, the right to a hearing without undue delay. The speed of proceedings and the concentration of procedural activities is a key factor in preparatory proceedings, and omissions in this field may result in annihilation of the aims of criminal proceedings laid down in Article 2 CPC, thus, such development of proceedings that results in adjudication in a reasonable time.⁸³

It is assumed in the literature that:

- prolonging an investigation conducted by a financial body for preparatory proceedings, a prosecutor should limit his action to this activity and determine a period when the proceedings should finish, unless he recognises a necessity of being involved in prolonging the investigation and can take it over;⁸⁴
- in fiscal penal proceedings, until they are supervised by superior financial authorities, not a prosecutor, one cannot speak about his supervision over such proceedings;⁸⁵
- such a complaint is not updated, however, in a situation when a prosecutor has not been informed about the conducted proceedings;⁸⁶
- all preparatory proceedings concerning fiscal crimes are, pursuant to the Act on complaints, proceedings supervised by a prosecutor.⁸⁷

In the resolution of seven judges of the Supreme Court of 28 January 2016, I KZP 13/15,⁸⁸ the Court adjudicated on this issue and explained that: **“Prolongation of an investigation concerning fiscal crimes conducted by a financial body for preparatory proceedings and supervised by a superior authority with respect to this body, in accordance with Article 153 §1 third sentence FPC, for a period of six months, means the prosecutor takes supervision over the proceedings, which obliges him to exercise his entitlements under Article 298 §1 and Article 326 CPC in conjunction with Article 113 §1 FPC. With the moment of such prolongation, one can speak about the fulfilment of the requirement laid down in Article 1(1) of the Act of 17 June 2004 on complaints about the violation of a party's right to a hearing in preparatory**

⁸³ Ruling of the Appellate Court in Katowice of 27 November 2013, II AKz 717/13, LEX No. 1488978.

⁸⁴ M. Świetlicka, *Glosa do postanowienia Sądu Apelacyjnego w Katowicach z dnia 27 listopada 2013 r.*, LEX/el. 2014; by this author, *Metodyka pracy prokuratora w postępowaniu w sprawach o przestępstwa skarbowe i wykroczenia skarbowe*, Kraków 2014, pp. 33–37.

⁸⁵ G. Łabuda, T. Razowski, *Zakres przedmiotowy skargi na przewlekłość postępowania*, Prok. i Pr. No. 1, 2012, pp. 72–76.

⁸⁶ J. Kasiński, *Skarga na przewlekłość postępowania przygotowawczego – wybrane zagadnienia*, Palestra No. 11–12, 2009, p. 47.

⁸⁷ J. Skorupka (ed.), *Skarga na naruszenie prawa strony do rozpoznania sprawy bez nieuzasadnionej zwłoki. Komentarz*, Warsaw 2010, pp. 102–104.

⁸⁸ OSNKW 2016, No. 3, item 17.

proceedings conducted or supervised by a prosecutor and judicial proceedings without undue delay when a prosecutor at least should supervise such an investigation as a condition for admissibility of a complaint about lengthiness of proceedings, provided that this lengthiness occurs within the period of such supervision.”

The opinion was partly criticised in the doctrine,⁸⁹ but it is right.

In the justification of its resolution, the Supreme Court emphasised that Act of 17 June 2004 admits a complaint about lengthiness of preparatory proceedings only when a prosecutor conducts or supervises it and if it is his action or inaction that results in the lengthiness of this stage of the proceedings. Preparatory proceedings supervised by a prosecutor is such as the one that occurs in common criminal proceedings, the provisions of which are applied in fiscal penal proceedings, respectively. The provision of Article 122 FPC, making the cession of prosecutor’s powers to financial bodies for preparatory proceedings (§1(1)) and their superior authorities (§1(2)) by indicating that the term “prosecutor” used in the CPC provisions also means a financial body for preparatory proceedings and its superior authority. It also assumes that some activities laid down in the Criminal Procedure Code (Article 113 §1 FPC) may only be performed by a prosecutor, to whom a financial body for preparatory proceedings conducting fiscal preparatory proceedings must file a motion (Article 122 §2 FPC). The Supreme Court drew attention to the fact that in accordance with Article 151c FPC, a prosecutor must supervise:

- an investigation conducted by a financial body for preparatory proceedings (§1);
- an investigation into a fiscal crime conducted by this body when there are circumstances justifying obligatory defence counsel laid down in Article 79 §1 CPC, a prosecutor appointed expert psychiatrists to examine the psychological health of the accused, a court applied temporary detention of the suspect, and when the case is under supervision because of its importance or complexity (§2). In other cases, supervision over an investigation conducted by a financial body for preparatory proceedings is the competence of an authority that is the body’s superior (Article 151c §3 FPC).

ACT OF 18 OCTOBER 2006 ON REVEALING INFORMATION ABOUT DOCUMENTS OF THE STATE SECURITY BODIES OF 1944–1990 AND THE CONTENT OF THOSE DOCUMENTS

14. COURT BENCH COMPOSITION IN CASES CONCERNING TRUTHFULNESS OF LUSTRATION DECLARATIONS (ARTICLE 17)

In cases concerning truthfulness of lustration declarations, in accordance with Article 17 of the Act of 18 October 2006 on revealing information about documents of the state security bodies of 1944–1990 and the content of those documents,⁹⁰ a bench of three judges of a district court having jurisdiction over the place of residence of a person filing a

⁸⁹ J. Zagrodnik, gloss on this resolution, OSP 2017, No. 7–8, item 81.

⁹⁰ Journal of Laws [DZ.U.] of 2017, item 2186; hereinafter: Lustration Act.

lustration declaration adjudicate. This provision does not indicate whether a three-judge bench district court has the obligation to adjudicate in all proceedings before the court conducted in accordance with this legal act or only in case the adjudication concerns essentially the subject matter of truthfulness of lustration declarations.

In case law, it was assumed that such a bench composition applies to:

- all adjudications issued by a district court in proceedings conducted pursuant to the Lustration Act, thus also to rulings that these proceedings should be initiated or refused to be initiated, or discontinued;⁹¹
- only those district court rulings which adjudicate on the issue of truthfulness of lustration declarations.⁹²

The Supreme Court, in the resolution of seven judges of 24 August 2016, I KZP 2/16,⁹³ rightly decided that: **“In proceedings conducted in accordance with the Act of 18 October 2006 on revealing information about documents of the state security bodies of 1944–1990 and the content of those documents (uniform text, Journal of Laws [Dz.U.] of 2013, item 1388, as amended), a district court bench composed of three judges shall issue all rulings.”**

The Supreme Court, after an in-depth analysis of the concept of “a case” discussed in the case law of the Constitutional Tribunal and the Supreme Court as well as in the literature, drew the right conclusion that it concerns not only the main proceedings but also auxiliary, incidental and supplementary proceedings. Moreover, the Court carried out a detailed interpretation of the provisions of the Act following the linguistic, system-related, historical and functional directives demonstrating that a three-judge bench of a district court should adjudicate in lustration proceedings, regardless of the type of the judgement issued and the form of adjudication.

ACT OF 27 SEPTEMBER 2013 AMENDING THE ACT: CRIMINAL PROCEDURE CODE AND SOME OTHER ACTS

15. COURT BENCH (ARTICLE 30)

In accordance with Article 30 of the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts,⁹⁴ if pursuant to the act a court’s competence or bench composition has changed, a court that was originally competent and its original bench will continue to adjudicate in the given instance until the

⁹¹ Ruling of the Appellate Court in Katowice of 15 January 2014, II AKz 763/13, KZS 2014, No. 4, item 103; ruling of the Appellate Court in Kraków of 3 February 2011, II AKz 20/11, KZS 2011, No. 10, item 43; ruling of the Appellate Court in Kraków of 23 February 2011, II AKz 2/11, KZS 2011, No. 6, item 53.

⁹² Supreme Court resolution of 23 March 2011, I KZP 31/10, OSNKW 2011, No. 3, item 23; ruling of the Appellate Court in Katowice of 11 April 2011, II AKz 667/10, LEX No. 846511; ruling of the Appellate Court in Białystok of 22 March 2013, II AKz 73/13, LEX No. 1294887; judgement of the Appellate Court in Łódź of 18 January 2011, II AKa 216/10, OSA 2011, No. 11, pp. 60–66.

⁹³ OSNKW 2016, No. 10, item 64.

⁹⁴ Journal of Laws [DZ.U.] of 2013, item 1247, as amended; hereinafter: Act of 27 September 2013.

end of the proceedings. This regulation raised doubts whether the term “a court’s original bench” means a court’s bench determined in the provisions binding at the moment when the proceedings started in a given instance or a court’s bench in terms of its personal composition appointed in accordance with the provisions binding before the discussed Act entered into force and which started adjudicating at the main trial before 1 July 2015.

It is assumed in the judiciary and literature that it concerns:

- the initiation of the main trial,⁹⁵
- the initiation of proceedings in a given instance because the stage of its progress does not matter.⁹⁶

The Supreme Court, in the ruling of 29 November 2016, I KZP 9/16,⁹⁷ decided that: **“The phrase ‘a court’s original bench’ used in Article 30 of the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts, Journal of Laws [Dz.U.] of 2013, item 1247, means a court’s bench determined by the provisions binding at the moment when proceedings in a given instance started.”**⁹⁸

It is a right opinion and does not deserve the criticism it faced.⁹⁹

In the justification of the decision, the Court emphasised that the legislator specified only the moment when petrification of a court’s competence or of a bench composition resulting from the provisions binding before 1 July 2015 takes place; it is the “conclusion of proceedings in a given instance”. In the Supreme Court’s opinion, a conclusion can be drawn *a contrario* that the initiation of proceedings in a given instance is the starting point for petrification of a court’s bench. Therefore, it is a court’s bench composed in accordance with the legal regulations and not a particular personal composition of a bench appointed pursuant to the regulations that had been in force before the amendment of September 2013 entered into force. The justification presents the stand that Article 30 Act of 27 September 2013 stipulates that a court’s bench under former regulations should be petrified. This is confirmed by the wording of the provision, which in its initial part refers to a change of a court’s bench composition resulting from the new act.

⁹⁵ Judgement of the Appellate Court in Lublin of 26 January 2016, II AKa 295/15, LEX No. 1994424; judgement of the Appellate Court in Katowice of 17 February 2016, II AKa 12/16, KZS 2016, No. 5, item 87; M. Świetlicka, *Komentarz do art. 30 ustawy z dnia 27 września 2013 roku o zmianie ustawy Kodeks postępowania karnego i niektórych innych ustaw* (Dz.U. z 2013 r., poz. 1247), Lex/el. 2015.

⁹⁶ Supreme Court ruling of 15 June 2016, V KK 114/16, LEX No. 2080107; Supreme Court ruling of 29 June 2016, II KK 180/16, LEX No. 2062819; Supreme Court ruling of 23 September 2016, III KK 41/16, LEX No. 2122061; judgement of the Appellate Court in Wrocław of 5 May 2016, II AKa 95/16, LEX No. 2052587; judgement of the Appellate Court in Wrocław of 7 April 2016, II AKa 93/16, Orz. SA we Wrocławiu 2016, No. 2, item 340; D. Świecki, [in:] B. Augustyniak, D. Świecki (ed.), M. Wąsek-Wiaderek, *Postępowanie odwoławcze, nadzwyczajne środki zaskarżenia, postępowanie po uprawomocnieniu się wyroku i postępowanie w sprawach karnych ze stosunków międzynarodowych*, Kraków 2015, p. 16.

⁹⁷ OSNKW 2016, No. 12, item 85.

⁹⁸ Thus, also in the Supreme Court ruling of 6 February 2017, V KK 395/16, LEX No. 2255444; Supreme Court ruling of 10 January 2017, II KK 183/16, LEX No. 2261738.

⁹⁹ W. Jasiński, *Petryfikacja składu sądu w przepisach intertemporalnych – uwagi na tle postanowienia Sądu Najwyższego z dnia 29 listopada 2016 r.*, I KZP 9/216, *Ius Novum* No. 3, 2017, pp. 21–36.

ACT OF 11 MARCH 2016 AMENDING THE ACT:
CRIMINAL PROCEDURE CODE AND SOME OTHER ACTS

16. TRANSITIONAL PROVISIONS

The Act of 11 March 2016 amending the Act: Criminal Procedure Code and some other acts¹⁰⁰ introduces numerous changes to the Criminal Procedure Code, which mainly consist in reversing changes introduced by the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts.¹⁰¹ The Act does not provide a general rule stipulating that the provisions amended by the Act are applicable to cases initiated before the date when it enters into force, unless it is stipulated otherwise in statute; it only contains transitional provisions applicable to some issues. As a result, a practical problem arose which provisions should be applied in cases conducted after the Act entered into force in which an indictment, a motion to issue a conviction, a motion to conditionally discontinue proceedings or a motion to discontinue preparatory proceedings and order a preventive measure were filed before 1 July 2015, i.e. before the Act of 27 September 2013 entered into force.

The Supreme Court, in the resolution of seven judges of 29 November 2016, I KZP 10/16,¹⁰² which was awarded the power of a legal principle, assumed that: **“In cases conducted after 14 April 2016, in which an indictment, a motion to issue a conviction, a motion to conditionally discontinue proceedings or a motion to discontinue preparatory proceedings and order a preventive measure were filed in a court before 1 July 2015, the provisions regulating criminal procedure introduced by the Act of 11 March 2016 amending the Act: Criminal Procedure Code and some other acts (Journal of Laws [Dz.U.] of 2016, item 437), i.e. in general new provisions, shall be applied.”**

It is a right opinion, properly and convincingly justified. However, it faced partial criticism in the literature.¹⁰³

It is not possible to quote all the arguments even briefly. However, it is sufficient to point out that the Court rightly approved of the application of the basic form of solving inter-temporal problems in accordance with criminal procedure law, namely the principle of applying the new law (*lex nova*), which is called the principle of direct application of a new legal act or the principle of “catching in the flight”.¹⁰⁴ In general, it is assumed that in case of amendments to the rules of proceedings, the law binding at the moment when the procedural action or an assessment of an actual situation, entitlement or obligation were made should be applied (*tempus regit actum*).¹⁰⁵ The rule as a basic principle of transitional law is applied in an analogous way when, amending law, the legislator does not lay down transitional

¹⁰⁰ Journal of Laws [DZ.U.] of 2016, item 437; hereinafter: Act of 11 March 2016.

¹⁰¹ Journal of Laws [Dz.U.] of 2013, item 1247, as amended.

¹⁰² OSNKW 2016, No. 12, item 79.

¹⁰³ D. Krakowiak, gloss on this resolution, LEX/el. 2017.

¹⁰⁴ H. Paluszkiwicz, *Studia z zakresu problematyki intertemporalnej w prawie karnym procesowym*, Warsaw 2016, pp. 3, 15 and 19.

¹⁰⁵ *Ibid.*, p. 17.

provisions.¹⁰⁶ This means that from the moment a new law enters into force, it is necessary to apply it in general in all the situations that occur in the course of the already initiated criminal proceedings.¹⁰⁷

The Court was right to point out in the discussed resolution that the dominating nature of this principle in relation to the provisions of criminal procedure law also makes it possible to eliminate doubts concerning the need to derogate from the former transitional provisions, especially Article 27 Act of 27 September 2013, in accordance with which the provisions of amended acts in the wording of this act are applicable to cases initiated before the date it entered into force, unless it is stipulated otherwise in statute. Since the later act lays down its own transitional provisions containing exceptions, the former regulations of transitional issues lose their power without the need to indicate that in particular provisions.

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¹⁰⁶ Supreme Court ruling of 24 August 2016, IV KZ 38/16, LEX No. 2151441.

¹⁰⁷ H. Paluszkiwicz, [in:] K. Dudka, H. Paluszkiwicz, *Postępowanie karne*, Warsaw 2017, p. 32.

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REVIEW OF RESOLUTIONS OF THE SUPREME COURT CRIMINAL CHAMBER CONCERNING CRIMINAL PROCEDURE LAW FOR 2016

Summary

The review presents the analysis of resolutions and rulings of the Criminal Chamber of the Supreme Court adopted in the course of solving legal issues concerning criminal procedure in 2016. The following issues are discussed: the concept of the aggrieved (Article 59 §1 CPC), the appointment of a defence counsel on request (Article 80a §2 CPC), a complaint about the seizure of things versus the course of preparatory proceedings (Article 236 §1 CPC), conditional temporary detention (Article 257 §2 CPC), a complaint about a prosecutor's decision containing a request that a bank provide information constituting bank secrecy (Article 301 §2 CPC), legal questions asked by appellate courts (Article 441 §1 CPC), valid court ruling concluding proceedings (Article 521 §1 CPC), awarding partial costs in cases initiated by public prosecution (Article 630 CPC), a complaint of a party whose right to a hearing without undue delay has been infringed as a result of action or inaction of a prosecutor supervising preparatory proceedings (Article 1(1) Act of 17 June 2004 on complaints about the

violation of a party's right to a hearing in preparatory proceedings conducted or supervised by a prosecutor and in judicial proceedings without undue delay), filing a written motion to a district court to order surveillance (Article 19(1) or (3) Act of 6 April 1990 on the Police), provisions binding in cases concerning requests that a resolution excluding a plaintiff from membership in a hunting organisation be quashed (Article 33(6) Act of 13 October 1995: Hunting law), transitional provisions (Act of 11 March 2016 amending the Act: Criminal Procedure Code and some other acts), a court bench (Article 30 Act of 11 March 2016), a court bench composition in cases concerning truthfulness of lustration declarations (Article 17 Act of 18 October 2006 on revealing information about documents of the state security bodies of 1944–1990 and the content of those documents), specific questions of the Supreme Court (Article 59 Act of 23 November 2002 on the Supreme Court), abstract questions (Article 60 §1 and §2 Act on the Supreme Court).

Keywords: surveillance, defence counsel, lustration declaration, the accused, hunting law, transitional provisions, legal question, Supreme Court, court bench, bank secrecy, complaint

PRZEGLĄD UCHWAŁ IZBY KARNEJ SĄDU NAJWYŻSZEGO W ZAKRESIE PRAWA KARNEGO PROCESOWEGO ZA 2016 R.

Streszczenie

Przedmiotem opracowania jest analiza uchwał i postanowień Izby Karnej Sądu Najwyższego podejmowanych w ramach rozstrzygnięcia zagadnień prawnych z zakresu postępowania karnego w 2016 r. Omówione zostały takie zagadnienia, jak: pojęcie pokrzywdzonego (art. 59 §1 k.p.k.), wyznaczenie obrońcy z urzędu na wniosek (art. 80a §2 k.p.k.), zażalenie na czynność zatrzymania rzeczy a bieg postępowania przygotowawczego (art. 236 §1 k.p.k.), warunkowe tymczasowe aresztowanie (art. 257 §2 k.p.k.), zażalenie na postanowienie prokuratora zawierające żądanie udzielenia przez bank informacji stanowiących tajemnicę bankową (art. 301 §2 k.p.k.), pytania prawne sądów odwoławczych (art. 441 §1 k.p.k.), prawomocne orzeczenie sądu kończące postępowanie (art. 521 §1 k.p.k.), częściowe zasądzenie kosztów w sprawach z oskarżenia publicznego (art. 630 k.p.k.), skarga strony, której prawo do rozpoznania sprawy bez nieuzasadnionej zwłoki zostało naruszone na skutek działania lub bezczynności prokuratora nadzorującego postępowanie przygotowawcze (art. 1 ust. 1 ustawy z dnia 17 czerwca 2004 r. o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki), wystąpienie z pisemnym wnioskiem do sądu okręgowego o zarządzenie kontroli operacyjnej (art. 19 ust. 1 lub 3 ustawy z dnia 6 kwietnia 1990 r. o Policji), przepisy właściwe w sprawach dotyczących żądania uchylenia uchwał wykluczających powoda z grona członków koła łowieckiego (art. 33 ust. 6 ustawy z dnia 13 października 1995 r. – prawo łowieckie), przepisy intertemporalne (ustawa z dnia 11 marca 2016 r. o zmianie ustawy – kodeks postępowania karnego oraz niektórych innych ustaw), skład sądu (art. 30 ustawy z dnia 11 marca 2016 r.), skład sądu w sprawach zgodności z prawdą oświadczeń lustracyjnych (art. 17 ustawy z dnia 18 października 2006 r. o ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944–1990 oraz treści tych dokumentów), pytania konkretne Sądu Najwyższego (art. 59 ustawa z dnia 23 listopada 2002 r. o sędzię najwyższym), pytania abstrakcyjne (art. 60 §1 i 2 ustawy o Sądzie Najwyższym).

Słowa kluczowe: kontrola operacyjna, obrońca, oświadczenie lustracyjne, pokrzywdzony, prawo łowieckie, przepisy intertemporalne, pytanie prawne, Sąd Najwyższy, skład sądu, tajemnica bankowa, zażalenie

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