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# Remarks on the Question of Cessation of the Running of Limitation Period for Amenability to a Penalty (Selected Issues)

## *Uwagi w kwestii przerwy biegu terminu przedawnienia karalności przestępstw (kwestie wybrane)*

ABSTRACT

The author discusses the regulations concerning cessation of the running of limitation period for amenability to a penalty contained in the Act of 13 June 2019 amending the Penal Code and certain other acts, in the draft Act amending the Penal Code and certain other acts of 16 September 2021, and in the Act of 7 July 2022 amending the act – Penal Code and certain other acts. The Constitutional Tribunal in its judgment of 14 July 2020 (Kp 1/19) decided that the Act of 13 June 2019 amending the Penal Code and certain other acts was incompatible in its entirety with Article 7 in conjunction with Article 112 and Article 119 (1) of the Polish Constitution. According to the Constitutional Tribunal, the reason for the defectiveness of this law was the Sejm's failure to observe the correct procedure for the adoption of this law as provided for in the Constitution. Under the proposed regulation, in the case of a reasonable suspicion of another offence found in the course of criminal proceedings, the criminality of this newly disclosed offence was supposed to be extended as set out in Article 102 § 1 of the Penal Code. A circumstance to cause an extension (or cessation) of the limitation period for a newly disclosed offence would be reasonable suspicion that the offence was committed. In that case, the amenability to a penalty for that offence would be temporally extended from the date on which the first evidence-taking activity was proceeded to determine whether that offence had been committed. The author criticized this proposal and put forward arguments challenging the validity of this amendment to the Penal Code. The discussion leads to the conclusion that the proposed amendment to Article 102 of the Penal Code does not guarantee that the time in which the circumstances justifying the extension of the limitation period for the offence would occur is precisely determined. The limitation period should be set in such a way as to allow precise determination of the lapse of

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that period. It determines the cessation of amenability to a penalty and thus the admissibility or inadmissibility of criminal proceedings. Moreover, the amendment does not guarantee that a reasonable suspicion of committing the crime arises. This, therefore, justifies the finding that legislation does not fulfil the guarantee (protection) function relating to statutes of limitation as a precondition of a criminal trial. For these reasons, the solution offered in proposed Article 102 § 2 of the Penal Code should be considered highly debatable.

**Keywords:** extension of the limitation period for the offence; limitation period; Penal Code; criminal proceedings

## INTRODUCTION

First, it is necessary to address the terminological issue regarding the concept of "cessation" (Pol. *przerwa*) of the limitation period. The literature on the subject has raised objections to this term.[1] It has been pointed out that the term "cessation" is inadequate to the provisions of Article 102 of the Penal Code (hereinafter: the PC), because where certain procedural acts are done, the limitation periods do not run anew, but are just extended.[2] It is therefore proposed that the term "cessation" should not be used, but to refer to "additional limitation periods" in the case of the regulation pointed to in Article 102 of the PC.[3] While sharing the objections with regard to the inadequacy of the use of the term "cessation", it may be added that an additional argument is that the concept of "cessation" is sometimes identified with the resting of the limitation period, that is to say, with the regulation of Article 104 of the PC.[4] In my opinion, it would be most appropriate for the regulation contained in Article 102 of the PC to use the term "extension of the limitation period for amenability to a penalty".[5] At the same time, however, a long-standing tradition of using the term "cessation of the limitation period for amenability to a penalty" to designate the rules referred to in Article 102 of the PC speaks for the admissibility of using the current term.

The study covers the regulations concerning the cessation of running of the limitation period contained in the Act of 13 June 2019 amending the Penal Code and certain other acts. President of the Republic of Poland Andrzej Duda, acting pursuant to Article 122 (3) of the Polish Constitution, decided to refer this Act to the

[1] See K. Banasik, *Przedawnienie w prawie karnym w systemie kontynentalnym i anglosaskim*, Warszawa 2013, pp. 156–161; R. Kmiecik, *Przerwa biegu terminu przedawnienia*, [in:] *System Prawa Karnego Procesowego*, vol. 4: *Dopuszczalność procesu*, eds. M. Jeż-Ludwichowska, A. Lach, Warszawa 2015, p. 863.

[2] K. Banasik, *op. cit.*, pp. 158–160.

[3] *Ibidem*, p. 160.

[4] See A. Marek, *Prawo karne*, Warszawa 2001, p. 385.

[5] As in Ł. Pohl, *Prawo karne. Wykład części ogólnej*, Warszawa 2013, p. 473.

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Constitutional Tribunal by way of preventive review.[6] The Constitutional Tribunal in the judgment of 14 July 2020[7] ruled that the Act of 13 June 2019 amending the Penal Code and certain other acts was in its entirety inconsistent with Article 7 in conjunction with Article 112 and Article 119 (1) of the Polish Constitution. Failure to observe the procedure for adopting this Act as required by the Constitution was pointed out as the reason for such a decision.[8] This decision of the Constitutional Tribunal does not, however, render pointless the analysis of the regulations proposed in this Act concerning the cessation of the limitation period for amenability to a penalty. This change was supposed to consist in the fact that the content of the previous Article 102 of the PC was included as § 1 of the amended Article 102 of the PC. At the same time, Article 102 of the PC was supplemented by § 2, according to which, if during initiated proceedings a reasonable suspicion of commission of another offence has been found, the amenability to a penalty for this offence was to be extended in the manner specified in § 1 as of the date on which the first evidence-taking activity was taken to establish whether the crime had been committed. Moreover, it should be added that the draft, currently under preparation, of the Act amending the Penal Code and certain other acts of 16 September 2021 provides for the same regulation of Article 102 § 2 of the PC as in the Act of 13 June 2019.[9] An analogous regulation of Article 102 § 2 of the PC has been included in Article 1 (37) of the Act of July 2022 amending the Act – Penal Code and certain other acts (Parliamentary print no. 2024).

The amendment provided for in the Act of 13 June 2019 was assessed with criticism.[10] According to the position of the Polish Commissioner for Civil Rights, this change constituted a significant shift towards increasing the repressiveness of

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[6] See Kancelaria Prezydenta, Komunikat z dnia 28 czerwca 2019 r., https://k.prezydent.pl/prawo/wnioski-do-tk/komunikat-w-zwiazku-ze-skierowaniem-przez-prezydenta-rp-wniosku-do-tk,25668 (access: 10.5.2022).

[7] Kp 1/19, Polish Monitor 2020, item 647.

[8] See the substantiation for the judgement of the Constitutional Tribunal of 14 July 2020, K 1/19, LEX no. 3028994.

[9] See Article 1 (38) of the draft Act amending the Penal Code and certain other acts of 16 September 2021, case BSA II.021.18.2021.

[10] See J. Giezek, K. Lipiński, *Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku)*, https://bip.brpo.gov.pl/sites/default/files/Opinia%20Katedry%20Prawa%20Karnego%20Materialnego%20WPAE%20UWr%20do%20nowelizacji%20kodeksu%20karnego.pdf (access: 10.3.2022), p. 21; *Opinia do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, BSA II-021-112/19, https://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/2019.04.26%20-%20021-112-19%20-%20Opinia%20SN%20-%20ustawa%20o%20zm.%20ustawy%20-%20K.k.%20oraz%20niekto%CC%81rych%20innych%20ustaw.pdf (access: 10.5.2022), p. 14; A. Barczak-Oplustil, W. Górowski, M. Małecki, W. Zontek, S. Tarapata, W. Wróbel, M. Iwański, *Opinia do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu*

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criminal law.[11] It has been pointed out that it could cause far-reaching practical problems.[12] According to J. Giezek and K. Lipiński, the phrase "taking the first step in evidence taking aimed at finding out whether it [the crime] has been committed" may raise doubts as to whether, e.g., the hearing of a witness in other proceedings can be considered such a step.[13] The opinion also states that it is difficult to interpret the term "taking the first step in evidence taking aimed at finding out whether it has been committed".[14]

The expressions contained in Article 102 § 2 of the Act amending the Penal Code were also challenged in the opinion presented by the Supreme Court Research and Analyses Office.[15] It was argued that the determination of that moment in the Act amending the Penal Code is not sufficiently unequivocal, which would in practice raise doubts as to the moment when the period of amenability to a penalty was extended. It was found that it would be particularly problematic after a long time from the initiation of the proceedings, when the proceeding body had a reasonable suspicion that another offence had been committed.[16] Moreover, the opinion has pointed out that the content of the proposed Article 102 § 2 of the PC does not give an unequivocal answer as to whether it is about an evidence-taking step that took place after the reasonable suspicion of a crime, or also an earlier activity, from which such a suspicion arose. In the opinion of the authors of the opinion prepared by the Supreme Court Research and Analyses Office, the legal regulation contained in this Act raised doubts as to whether the taking of evidence was actually directed at whether the offence concerned had been committed.[17] Also, the opinion prepared by A. Barczak-Oplustil, W. Górowski, M. Małecki, W. Zontek, S. Tarapata, W. Wróbel and M. Iwański argues that it is not known what criteria can be used to determine whether a given evidence-taking action was indeed aimed at finding whether a crime had been committed.[18] In the opinion of the Centre for Research, Studies and Legislation of the National Council of Attorneys at Law, the proposed

*16 maja 2019 r.*, Kraków, 9.6.2019, https://obserwatoriumdemokracji.pl/wp-content/uploads/2019/06/opiniaKIPK_nowelizacja2019.pdf (access: 12.4.2022).

[11] See Rzecznik Praw Obywatelskich, *Opinia do ustawy z dnia 16 maja 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, II.510177.2019, 20.5.2019, https://bip.brpo.gov.pl/sites/default/files/Opinia%20RPO%20dla%20Senatu%20ws%20zmian%20w%20prawie%20karnym,%2020%20maja%202019.pdf (access: 10.5.2022), pp. 1–2.

[12] See J. Giezek, K. Lipiński, *op. cit.*, p. 35.

[13] *Ibidem*.

[14] *Ibidem*. It should be added that this opinion held that difficulties in interpretation were also caused by the phrase "finding a suspicion of commission of another offence".

[15] See Biuro Studiów i Analiz Sądu Najwyższego, *op. cit.*, p. 14.

[16] *Ibidem*.

[17] *Ibidem*.

[18] A. Barczak-Oplustil, W. Górowski, M. Małecki, W. Zontek, S. Tarapata, W. Wróbel, M. Iwański, *op. cit.*, p. 74.

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wording of Article 102 § 2 of the PC raised interpretation doubts, in particular as to whether the proceeding body had a reasonable suspicion that another offence had been committed and what was the first step in evidence taking[19].

It was also stated that the limitation period constituted a negative precondition and should therefore be regulated in such a way as to allow the circumstances of the cessation of the limitation period to be determined quickly and unequivocally.[20] It was argued that the regulation contained in the amended Article 102 § 2 of the PC extending the limitation period for amenability to a penalty is vague, which destabilises this legal construct.[21] Consideration should also be given to whether the proposed regulations are consistent with the relevant provisions of the Code of Criminal Procedure (hereinafter: the CCP). The application of criminal law can only take place during a criminal trial.

The purpose of this study is to consider whether the proposed amendment to Article 102 of the PC, providing for the extension of the limitation period for amenability to a penalty in the event of the occurrence of the circumstances set out in this provision, meets the requirements that should be fulfilled by legal regulations on the limitation period. Limitation as a precondition for the trial should specify exactly at what point the limitation periods begin to run and when they expire. A precise definition of these circumstances determines the admissibility or inadmissibility of a criminal trial. That precision is reflected in the way in which limitation periods are calculated. It is generally accepted in the literature that limitation periods, unlike procedural time limits intended for the performance of procedural acts specified in the CCP, are calculated according to the rule of *computatio naturalis* (*a momento ad momentum*).[22] For this reason, it is pointed out in the literature that one function of the conditions of admissibility of the trial, including the institution of limitation, is the guarantee (protective) function.[23] In this analysis, the rules of linguistic and functional interpretation have been applied.

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[19] Ośrodek Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych, *Opinia na temat projektu z dnia 25 stycznia 2019 r. o zmianie ustawy Kodeks karny oraz niektórych innych ustaw*, 11.3.2019, https://bip.brpo.gov.pl/sites/default/files/Opinia%20KRRP%20ws%20zmian%20w%20prawie%20karnym%2C%2011%20marca%202019.pdf (access: 10.5.2022), p. 21.

[20] Biuro Studiów i Analiz Sądu Najwyższego, *op. cit.*, p. 14.

[21] Ośrodek Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych, *op. cit.*, p. 21.

[22] For example, see S. Śliwiński, *Polski proces karny przed sądem powszechnym. Zasady ogólne*, Warszawa 1959, p. 111; K. Marszał, *Przedawnienie w prawie karnym*, Warszawa 1972, p. 145; R. Kmiecik, *Przedawnienie karalności*, [in:] *System Prawa Karnego Procesowego*, vol. 4, p. 850; M. Kulik, *Przedawnienie karalności i przedawnienie wykonywania kary w polskim prawie karnym*, Warszawa 2014, p. 222.

[23] See S. Steinborn, *Funkcje systemu warunków dopuszczalności procesu*, [in:] *System Prawa Karnego Procesowego*, vol. 4, p. 83 and the literature referred to therein.

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## DETAILED COMMENTS AND OBJECTIONS ON THE REGULATION

1. The proposed amendment to Article 102 of the PC is in line with the trend of amendments to the PC of 1997, which essentially boils down to the liberalisation of the requirements that must be met in order to extend the limitation periods for amenability to a penalty. While in the original version of the PC of 1997 the limitation period used to be ceased by the initiation of *in personam* proceedings,[24] since 2 March 2016 the PC has linked the extension of limitation periods to the initiation of *in rem* proceedings.[25] It is rightly pointed out in the literature that the regulation which linked the cessation of limitation period to the initiation of *in personam* proceedings meant that in order to produce this effect in the course of criminal proceedings, much more serious requirements (prosecution against a specific person) had to be met than in the case of linking the extension of the limitation period for amenability to a penalty to the initiation of proceedings *in rem*.[26]

[24] See decision of the Supreme Court of 25 October 2012, IV KK 226/72, Legalis no. 546806.

[25] One of contentious issues in the Penal Code of 1969 was how to understand the phrase "initiation of proceedings" within the meaning of Article 106 causing the cessation in the running of limitation period. Such wording of Article 106 of the PC of 1969 used to be associated with the initiation of *in rem* proceedings (see I. Andrejew, [in:] I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem*, Warszawa 1973, pp. 353–354; M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1990, p. 494; K. Marszał, *Przedawnienie w prawie karnym…*, 1972, p. 161; idem, *Przedawnienie w prawie karnym wymaga zmian*, [in:] *Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla*, eds. P. Kardas, T. Sroka, W. Wróbel, vol. 2, Warszawa 2012, p. 825; R. Góral, *Kodeks karny. Praktyczny komentarz*, Warszawa 1996, p. 129; R. Kmiecik, *Przedawnienie karalności*, [in:] T. Taras, E. Skrętowicz, R. Kmiecik, *Proces karny. Część ogólna*, Lublin 1975, p. 187; I. Nowikowski, *Glosa do wyroku SN z dnia 12 III 1979 r.*, OSPiKA 1980, no. 7–8, pp. 359–361; as in judgment of the Supreme Court of 12 March 1979, I KR 27/79, OSNKW 1979, no. 7, item 80; resolution of the Supreme Court of the panel of 7 judges of 15 October 1992, I KZP 28/92, OSNKW 1992, no. 11–12, item 76; see also judgment of the Supreme Court of 22 September 1999, II KKN 526/98, LEX no. 1635368), or *in personam* (see the resolution of the Supreme Court of 15 April 1971, VI KZP 79/70, OSNKW 1971, no. 6, item 84; as in I. Andrejew, *Polskie prawo karne w zarysie*, Warszawa 1980, p. 317; S. Kalinowski, *Polski proces karny*, Warszawa 1971, p. 168; M. Siewierski, [in:] J. Bafia, J. Bednarzak, M. Flemming, S. Kalinowski, H. Kempisty, M. Siewierski, *Kodeks postępowania karnego. Komentarz*, Warszawa 1976, p. 58; A. Zoll, *Komentarz do art. 106*, [in:] K. Buchała, Z. Ćwiąkalski, M. Szewczyk, A. Zoll, *Komentarz do kodeksu karnego. Część ogólna*, Warszawa 1990, pp. 380–381).

[26] K. Zgryzek, A. Ludwiczek, R. Netczuk, *Przedawnienie w prawie karnym – wybrane aspekty karnoprocesowe*, [in:] *Współzależność prawa karnego materialnego i procesowego*, eds. Z. Ćwiąkalski, G. Artymiak, Warszawa 2009, p. 245. It is worth noting at this point that linking the cessation of the limitation period with the initiation of *in personam* proceedings may raise objections when determining the amenability to a penalty crimes committed as complicity. See R. Kmiecik, *Z problematyki przedawnienia w warunkach współdziałania przestępnego (w świetle art. 102 k.k.)*, [in:] *Zmiany w polskim prawie karnym po wejściu w życie Kodeksu karnego z 1997 roku*, eds. T. Bojarski, K. Nazar, A. Nowosad, M. Szwarczyk, Lublin 2006, pp. 377–378; idem, *Przerwa biegu…*, p. 862; M. Kulik, *op. cit.*, pp. 417–418.

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2. It is highly probable that the above-mentioned regulation on the circumstances giving rise to the cessation of running of the period was the consequence of adopting the view that the extension of the scope of the proceedings to include further facts found in the course of the proceedings does not require a further decision on the matter.[27] It is argued that such a solution is supported by the wording of § 106 of the current Rules of internal procedure of the general organisational units of the Public Prosecutor's Office,[28] according to which the investigation or enquiry commenced in the case must be carried out for all offences disclosed.[29] This regulation is supplemented by § 107 of these Rules of internal procedure, according to which a single preparatory procedure covers all acts related in subjective or objective terms with the offence which gave rise to the initiation of proceedings, unless the circumstances referred to in Article 34 § 3 of the CCP take place, i.e. there are circumstances which make it difficult to hear cases jointly. On the other hand, § 124 (1) of the applicable Rules of internal procedure of the organisational units of the Public Prosecutor's Office, repeats the rule laid down in Article 303 of the CCP and Article 325a § 2 of the CCP that the decision to open an investigation or enquiry shall specify the offence being investigated.

It has therefore been assumed that a change of the subject of the proceedings in the course of further procedural actions does not entail the need to modify the decision to initiate pre-trial proceedings.[30] It has been stated, that an exception to this rule is the situation, where in a case carried out in the form of enquiry, in the course of the already conducted activities a crime is revealed, which requires the form of investigation. In such a case it is necessary for the public prosecutor to issue a decision to initiate investigation.[31] Therefore, a position may be proposed, that in essence there is no point in issuing a new decision to initiate an investigation or an enquiry, when in the course of the initiated pre-trial proceedings evidence is disclosed, which indicates the commission of other acts, not substantively related to the case initiated earlier. According to this view, the initiation of the investigation concerning a specific act does not preclude covering by the investigation all other acts disclosed in the course of the investigation, without the need to issue separate decisions on the initiation

[27] As in Z. Brodzisz, *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2020, p. 771; B. Skowron, *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, Warszawa 2018, p. 630; R.A. Stefański, S. Zabłocki, *Kodeks postępowania karnego*, vol. 3: *Komentarz do art. 297–424*, LEX/el. 2021, thesis 18.

[28] Regulation of the Minister of Justice of 7 April 2016 – Rules of internal procedure of the general units of the Public Prosecutor's Office (consolidated text, Journal of Laws 2017, item 1206). Release since 10 February 2021.

[29] R.A. Stefański, S. Zabłocki, *op. cit.*, thesis 18.

[30] J. Grajewski, S. Steinborn, [in:] J. Grajewski, L.K. Parzycki, S. Steinborn, *Kodeks postępowania karnego. Komentarz*, vol. 1: *Komentarz do art. 1–424*, Warszawa 2013, p. 907.

[31] As in B. Skowron, *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego*…, 2018, p. 630; J. Grajewski, S. Steinborn, *op. cit.*, p. 907.

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of the investigation of these acts, as the description of the act in the decision on the initiation of the investigation is provisional and may be modified.[32]

According to another position, if during previously instituted proceedings a justified suspicion of commission of another offence arises, it is necessary to issue a separate decision to initiate the investigation in a newly disclosed case within the meaning of Article 33 § 1 of the CCP and Article 34 §§ 2 and 3 of the CCP, i.e. in the sense of proceedings concerning a specific act.[33] The position of T. Grzegorczyk coincides with the presented view. According to this author, in a situation, where it turns out that the suspect charged with a specific offence has also committed another offence, which was not subject to investigation, Article 314 of the CCP should not be applied, but it is necessary to initiate investigation concerning this newly found offence and to merge these cases into one proceeding.[34] It was pointed out that finding a new offence in the course of pre-trial proceedings, which makes it reasonable to conduct both proceedings jointly, results in the necessity to issue a decision on the initiation of proceedings concerning this new act and on combining both proceedings.[35] A view was therefore expressed that since these cases are to be conducted jointly, it becomes necessary to include the decision on the initiation of investigation in the files of the proceedings conducted so far.[36]

In considering this issue, it should be noted that acceptance of the view that there is no need to issue a decision to initiate an investigation or enquiry should a new offence not covered by the current investigation be revealed during the investigation procedure may give rise to doubts in view of the content of the current Article 102 of the PC. This provision links the extension of the limitation period to the initiation of *in rem* proceedings. Therefore, for guarantee reasons, it should be

[32] Z. Brodzisz, *Wszczęcie postępowania*, [in:] *Kodeks postępowania karnego…*, 2020, p. 772; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz*, vol. 2, Warszawa 2011, p. 42. See also L. Schaff, *Zakres i formy postępowania przygotowawczego*, Warszawa 1961, pp. 60–61.

[33] A. Łosicka, *Procesowe pojęcie sprawy*, "Prokuratura i Prawo" 2013, no. 3, p. 49.

[34] T. Grzegorczyk, *Kodeks postępowania karnego. Komentarz*, vol. 1: *Artykuły 1–467*, Warszawa 2014, p. 1079.

[35] K. Dudka, [in:] K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, Warszawa 2015, p. 31.

[36] It was argued that both the Code of Criminal Procedure and the Rules of internal procedure of the general organisational units of the Public Prosecutor's Office of 2010 (see Regulation of the Minister of Justice of 24 March 2010 – Rules of internal procedure of the general units of the Public Prosecutor's Office, consolidated text, Journal of Laws 2014, item 144, repealed on 14 January 2015) did not rule out such a solution. It was inferred from the wording of § 143, § 144, and § 131 of those Rules of internal procedure that, if there are grounds for doing so, an investigation must be initiated in each case understood as one offence, that is to say, in the case of multi-threaded pre-trial proceedings, an investigation should be initiated in respect of each of the threads, when that thread was not covered by the original decision to initiate proceedings. See A. Łosicka, *op. cit.*, pp. 49–50.

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accepted that a precise date for the initiation of criminal investigations is required.[37] That date may be defined precisely by setting a time-limit for the decision to initiate proceedings for that newly found offence.[38]

These guarantee reasons justify not only the modification of Article 106 of the Rules of internal procedure, but also the need to amend the CCP. This amendment should require a new decision on the initiation of proceedings to be issued when, in the course of an initiated investigation or enquiry, it would be necessary to conduct proceedings for a newly found offence that has not been covered by the proceedings so far. The provisions of both the code and the internal regulations should result in the obligation to issue a decision on the initiation of an investigation or enquiry into each offence covered by the proceedings (Articles 303 and 325a of the CCP, § 124 of the Rules of internal procedure), in which the offence and its legal classification would be specified (Article 303 of the CCP). On the other hand, nothing prevents combining the proceedings into a single pre-trial proceeding pursuant to § 107 of the Rules of internal procedure of 2016.

If, having carried out an appropriate action, the proceeding body has a reasonable suspicion that a crime has been committed, the principle of legality (Article 10 § 1 of the CCP) should be obliged to issue a decision to initiate an investigation (Article 303 of the CCP) or enquiry (Article 325a in conjunction with Article 303 of the CCP). This provision reflects the proceeding body's conviction about a reasonable suspicion that a crime has been committed and there is therefore no need to resort to the solution in the draft Article 102 § 2 of the PC. The question may be asked why the proceeding body's conviction about advisability of conducting an investigation into a newly discovered offence is to be expressed as an unspecified "proceeding body's conviction" and not in the immediate decision to initiate an investigation or enquiry into that offence? The issuance of such decision means that the fact that the proceedings were initiated is objectively verifiable as to the time in which it took place. This is to precisely specify the date when the proceeding body has acquired a reasonable suspicion that a new crime had been committed. This is important for finding when the extension of the limitation period occurred. At the same time, there is no doubt that, in the course

[37] See Z. Brodzisz, *Wszczęcie*..., p. 772; B. Skowron, *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, Warszawa 2020, pp. 620–621.

[38] According to B. Skowron (*Komentarz do art. 303*..., 2020, pp. 620–621), in view of the new wording of Article 102 of the PC, it would be necessary to look for ways of expressing the fact that offences which came to light only in the course of an investigation (enquiry), where there are no grounds for issuing a decision to present charges or a decision to separate procedural materials for distinct proceedings, it would then be necessary to make a decision to supplement the decision on the initiation, although this is not expressly stated in the Act.

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of the proceedings, the form of the offence referred to in the decision initiating the proceedings may be modified.[39]

It should be noted that the explanatory memorandum to the draft Act of 16 September 2021 states that, in order to ensure that there is no doubt as to which of the acts indicated in the amended Article 102 § 2 of the PC is the first, it is proposed to amend the rules of internal procedure of the general units of the Public Prosecutor's Office – regulation of the Minister of Justice of 7 April 2016. According to this proposal, the prosecutor will be obliged to record in the form of a document (a note) the initial taking of evidence to determine whether the offence has been committed. According to the proponents, such a solution will allow defining the time limit for extending the limitation period referred to in the draft Article 102 § 2 of the PC. In light of the aforementioned findings, this proposal should not be accepted.

3. The Act amending Article 102 of the PC assumed that if during initiated proceedings a reasonable suspicion of commission of another offence has been found, the amenability to a penalty for this offence was to be extended in the manner specified in § 1 of Article 102 of the PC as of the date on which the first evidence-taking activity was taken to establish whether the crime had been committed. It seems that the use of the words "evidence-taking activity to establish whether the crime had been committed" is not a precise wording.

If the effect referred to in the proposed Article 102 § 2 of the PC is to be connected with the first evidence-taking activity, the question may be asked whether the effect indicated in this provision would take place when, e.g. in the surveillance and recording of conversations pursuant to Article 237 of the CCP the evidence has been obtained of the commission of an offence which was not covered by the order to perform surveillance or by a person against whom such surveillance was not ordered. These offences may be included both in the catalogue set out in Article 237 § 3 of the CCP and may not have been listed in this provision. Thus, where evidence emerges justifying a suspicion that a person has committed an offence other than the one indicated in the surveillance order, a question arises as to whether this would be a sufficient condition for triggering the effect referred to in the proposed Article 102 § 2 of the PC. One should share the view that from the content of Article 237 § 8 of the CCP in the version provided for by the Act of 4 February 2011 amending the Code of Criminal Procedure and certain other acts[40] implied *a contrario* that it was not permissible to use in court the information acquired by wire tapping if it related to crimes other than those listed in the catalogue indicated

[39] W. Jasiński, [in:] K.T. Boratyńska, Ł. Chojniak, W. Jasiński, *Postępowanie karne*, Warszawa 2016, p. 406.

[40] Journal of Laws 2011, no. 53, item 273.

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in Article 237 § 3 of the CCP[41]. It was therefore only admissible to use evidence obtained as part of the surveillance and recording of telephone conversations in criminal proceedings for a criminal or fiscal offence for which it was possible to order such a surveillance and under the condition of obtaining consent in accordance with Article 237a of the CCP in the original wording of this provision. Applying this provision to the proposed regulation provided for in Article 102 § 2 of the PC, it should be concluded that in the case of finding evidence concerning a new crime not covered by the surveillance order, disclosure of such evidence would not interrupt the running of the limitation period for this crime, even if it raised a reasonable suspicion of commission of another crime. Under the legislation in question, the effect of extending the limitation period of a newly disclosed offence could occur if the so-called *ex post facto* consent was given. Pursuant to Article 237a of the CCP in the version defined by the Act of 4 February 2011, if as a result of surveillance, evidence was obtained of an offence listed in Article 237 § 3 of the CCP, committed by the person with regard to whom the surveillance was performed, other than the offence covered by the surveillance order or committed by another person, the prosecutor during the surveillance or no later than within 2 months from its closing, could apply to the court for consent to use it in criminal proceedings. The court could give its consent if it concerns an offence listed in the catalogue contained in Article 237 § 3 of the CCP, but not mentioned in the court's decision on ordering surveillance.[42] Then, in accordance with the postulated amendment to Article 102 of the PC, the cessation of the running of the limitation period would depend on the court's decision. If the court does not allow for the use of the evidence, this act should not have legal consequences in the form of the cessation of the running of the limitation period. This is because the "*ex post facto* consent" provided for in this provision was granted by the court and could not concern a crime not specified in Article 237 § 3 of the CCP.[43]

[41] P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2011, p. 1306; M. Rogalski, *Czynności ingerujące w wolność komunikowania się*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019, p. 4024.

[42] For more details, see M. Błoński, *Zakres przedmiotowy i podmiotowy podsłuchu procesowego*, "Palestra" 2012, no. 7–8, p. 85; T. Grzegorczyk, *Kodeks postępowania karnego*…, pp. 835–836; idem, *Procesowa i pozaprocesowa kontrola rozmów jako legalne wkraczanie w sferę konstytucyjnie chronionej wolności i tajemnicy komunikowania się po zmianie przepisów w tej materii w 2011 r.*, [in:] *Państwo prawa i prawo karne…*, pp. 1610–1629; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego…*, vol. 1, p. 1308; M. Rogalski, *op. cit.*, pp. 4024–4025.

[43] K. Eichstaedt, *Komentarz do art. 237a*, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2015, p. 765; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego…*, vol. 1, p. 1309; I. Nowikowski, *Bezpieczeństwo państwa a prawa oskarżonego w polskim prawie karnym procesowym (kwestie wybrane)*, "Teka Komisji Prawniczej PAN" 2018, no. 2, p. 314; J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks*

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The amendment of 11 March 2016 repealed Article 237 § 8 of the CCP and amended Article 237a of the CCP.[44] According to the new wording of Article 237a of the CCP, if during the surveillance, evidence has been found of a crime committed by a person covered by the surveillance, another criminal offence prosecuted ex officio or a fiscal offence other than covered by the surveillance order, or a criminal offence prosecuted ex officio or a fiscal offence committed by a person other than the person subject to the surveillance order, the prosecutor makes a decision on the use of this evidence in criminal proceedings, by issuing an appropriate decision.

According to the linguistic interpretation of Article 237a of the CCP, in its current version, if it is accepted that the decision on the use of evidence obtained under the procedure set out in that provision is taken solely by the prosecutor and acceptance of the assumption that the existing objective and subjective restriction contained in Article 237 § 3 of the CCP[45] has been lifted, then obtaining evidence to provide grounds for the suspicion of committing any crime prosecuted ex officio would have the effect of the new version mentioned in Article 102 of the PC if the prosecutor has taken a decision on the use of this piece of evidence.

The current regulation of Article 237a of the CCP, which, when interpreted literally, allows for the use of evidence in criminal proceedings relating to each criminal offence prosecuted ex officio or each fiscal offence and granting the decision-making on the use of this evidence to the prosecutor, raises doubts as to whether it complies with the constitutional norm.[46] It was argued that such an in-

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*postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2015, p. 559. See also M. Rogalski, *op. cit.*, pp. 3974–4026.

[44] See Act of 11 March 2016 amending the Code of Criminal Procedure and certain other acts (Journal of Laws 2016, item 437).

[45] According to K. Eichstaedt, the decision on the use of evidence under circumstances specified in Article 237a of the CCP is to be taken by the public prosecutor both in the pre-trial and judicial proceedings. See K. Eichstaedt, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. D. Świecki, vol. 1, Warszawa 2017, p. 843; idem, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz do zmian 2016*, ed. D. Świecki, Warszawa 2016, p. 228. This possibility of interpretation was also proposed by J. Machlańska (*Procesowe wykorzystanie podsłuchu w nowelizacji Kodeksu postępowania karnego oraz niektórych innych ustaw z dnia 11 marca 2016 r. w świetle prawa do obrony*, "Studia Iuridica Lublinensia" 2016, vol. 25(4), p. 134).

[46] P. Daniluk, *Instytucja tzw. zgody następczej po nowelizacji z 11 marca 2016 r. w świetle standardów konstytucyjnych i konwencyjnych*, "Studia Prawnicze" 2017, no. 3(211), p. 93; B. Janusz-Pohl, *Formalizacja i konwencjonalizacja jako instrumenty analizy czynności karnoprocesowych w prawie polskim*, Poznań 2017, pp. 466–467; R. Koper, *Podmiotowe i przedmiotowe granice stosowania podsłuchu w procesie karnym*, "Ius Novum" 2019, no. 1, p. 34; C. Kulesza, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2018, thesis 2; K. Woźniewski, *Decyzje prokuratora na podstawie art. 168b oraz art. 237a k.p.k.*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3, p. 3504. See also critical remarks by J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2018, p. 539. See also W. Jasiński, *Nielegalnie uzyskane dowody w procesie karnym. W poszukiwaniu optymalnego rozwią-*

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terpretation would in fact serve to legalize the illegal activities of state authorities.[47] It was pointed out that this interpretation would be a manifestation of unacceptable interference in the sphere of civil liberties, and it would be a restriction on the freedom of communication (Article 49 in conjunction with Article 31 (3) of the Polish Constitution).[48] In view of the above, there are interpretations that postulate the application of the pro-constitutional interpretation of Article 237a of the CCP. It assumes that Article 237a of the CCP refers only to the crimes listed in Article 237 § 3 of the CCP.[49] It is noted that the content of Article 237a of the CCP cannot be interpreted in isolation from Article 237 § 3 of the CCP, which contains a closed list of crimes.[50] It is argued that the introduction of a closed list of offences is important due to interference with the following constitutional rights: the right to privacy (Article 47 of the Polish Constitution) and the right to secrecy of communication (Article 49 of the Polish Constitution).[51] It should be noted that wiretapping during a criminal trial is a coercive measure which limits the constitutional rights of persons against whom these measures have been applied.[52] Therefore, the provisions introducing these measures should not be interpreted broadly.[53] It is also assumed

*zania*, Warszawa 2019, p. 452; P. Wiliński, *Konstytucyjny standard legalności dowodu w procesie karnym*, [in:] *Proces krany w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018, pp. 303–322.

[47] See K. Zgryzek, *Dowodzenie*, [in:] R. Koper, K. Marszał, J. Zagrodnik, K. Zgryzek, *Proces karny*, Warszawa 2019, p. 362. See also substantiation for the judgment of the Court of Appeal in Katowice of 24 November 2017, II AKa 363/17, LEX no. 2461354. See also M. Rogalski, *op. cit.*, p. 4027.

[48] R. Koper, *op. cit.*, p. 34.

[49] K.T. Boratyńska, P. Czarnecki, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. A. Sakowicz, Warszawa 2018, p. 645; C. Kulesza, *Komentarz do art. 237a…*, thesis 3; R.A. Stefański, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego*, vol. 2: *Komentarz do art. 167–296*, eds. R.A. Stefański, S. Zabłocki, LEX/el. 2019, thesis 2. See also judgment of the Court of Appeal in Katowice of 24 November 2017, II AKa 363/17, LEX no. 2461354. According to T. Grzegorczyk, these provisions "are a manifestation of the idea (difficult to approve in a democratic criminal trial) to convict the perpetrator at all costs and in every way possible, even at the cost of breaching the principles of democratic rule of law" (T. Grzegorczyk, *Kodeksowe legalizowanie w procesie karnym przez nowelizację z 11 marca 2016 r. dowodów uzyskanych za pomocą przestępstw lub naruszeniem przepisów postępowania albo poza granicami zgody udzielonej przez sąd na wkroczenie w sferę konstytucyjnie chronionych wolności jednostki*, [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018, p. 337).

[50] R.A. Stefański, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, thesis 2; R. Koper, *op. cit.*, p. 34.

[51] K.T. Boratyńska, P. Czarnecki, *op. cit.*, p. 645; R. Koper, *op. cit.*, p. 34.

[52] K. Marszał, *Wprowadzenie*, [in:] *Stosowanie środków przymusu w procesie karnym. Problem karnoprocesowych ograniczeń praw obywatelskich*, eds. K. Amelung, K. Marszał, Katowice 1990, pp. 18–20.

[53] Idem, *Zastrzeżenie wyłączności podstawy ustawowej stosowania środków przymusu w polskim procesie karnym*, [in:] *Stosowanie środków przymusu w procesie karnym…*, pp. 97–98.

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that in a situation where, during the surveillance, evidence of a crime not covered by the court's decision to order the surveillance and record telephone conversations or evidence of a listed offence, but committed by a person other than the person indicated in the court's decision to order the surveillance, the provision of Article 237a of the CCP grants the public prosecutor the power to review illegally obtained evidence, but only and solely for the purpose of determining whether other evidence can be lawfully (legally) obtained from this information.[54] It is commonly stated that the provision of Article 237a of the CCP does not entitle the prosecutor to introduce illegally obtained evidence into the criminal trial and to make factual findings based on it.[55] This view is supplemented by the proposition that the decision on the use of evidence obtained as provided for in Article 237a of the CCP at the stage of pre-trial proceedings is to be undertaken by the prosecutor and it refers only to this stage of the proceedings, but it does not bind the court.[56] It should be accepted that the authority entitled to make the final decision on the use of the evidence resulting from surveillance carried out under Article 237 of the CCP is the court and it is the court that ultimately decides on the use of evidence obtained outside the subjective and objective scope of Article 237a of the CCP.[57]

Referring these statements to the regulation proposed in Article 102 § 2 of the PC, the following statements can be made. The acceptance of the view that the public prosecutor makes at the stage of pre-trial proceedings a decision to use evidence obtained in accordance with the procedure provided for in Article 237a of the CCP results in that, following the proposed Article102 § 2 of the PC, the limitation period would be extended, if the prosecutor decides to use the evidence thus obtained. If an indictment or other action initiating judicial proceedings is brought before a court, then, assuming that the court will ultimately decide to use the evidence obtained as specified in Article 237a of the PC, the question may be asked whether, in the event

[54] J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, 2020, p. 585; M. Rogalski, *op. cit.*, p. 4029.

[55] J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, 2020, p. 585.

[56] As in K.T. Boratyńska, P. Czarnecki, *op. cit.*, p. 645; J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, 2020, p. 584. See also K. Woźniewski, *op. cit.*, pp. 3504–3506 and the literature referred to therein; R.A. Stefański, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, thesis 6.

[57] B. Janusz-Pohl, *Formalizacja i konwencjonalizacja…*, p. 467; eadem, *Konkretyzacja uprawnienia prokuratora w zakresie wykorzystania dowodów uzyskanych w ramach tzw. wtórnej kontroli opresyjnej*, [in:] *Artes serviunt vitae sapientia imperat. Proces karny sensu largo. Rzeczywistość i wyzwania. Księga jubileuszowa Profesora Tomasza Grzegorczyka z okazji 70. urodzin*, eds. R. Olszewski, D. Świecki, J. Kamiński, P. Misztal, K. Rydz-Sybilak, A. Małolepszy, Warszawa–Łódź 2019, p. 153, footnote 13; W. Jasiński, *Zakazy wykorzystania dowodów*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 2: *Dowody*, ed. J. Skorupka, Warszawa 2019, p. 2641; idem, *Nielegalnie uzyskane dowody…*, p. 556; R.A. Stefański, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, thesis 3; K. Woźniewski, *op. cit.*, pp. 3504–3505 and the literature referred to therein.

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that the court finds that the prosecutor's introduction of evidence obtained with trespassing the subjective and objective limits referred to in Article 237a of the CCP is illegal,[58] this has an impact on the extension of the period within the meaning of the proposed Article 102 § 2 of the PC. This is so because the circumstances which cease the limitation period are presumed to have a lasting effect. Nonetheless, this finding is accompanied by the view that it concerns lawful acts.[59]

Approaching this issue, one should take the view that the mere act of surveillance on the conversations carried out in accordance with the requirements of Article 237 of the CCP, during which material crossing its subjective or objective boundaries specified in the court's decision on the control and recording of the content of telephone conversations was obtained, is not illegal.[60] However, doubts arise as to the admissibility of using these materials in criminal proceedings. These doubts about the compliance of the regulation contained in Article 237a of the CCP with constitutional standards allow us to put forward the thesis that the court may ultimately decide whether to use this evidence as strict evidence.[61] It is also rightly stated that the systemic and teleological interpretation supports the position that in the event of an accidental exceeding the subjective scope of surveillance, it is possible to use evidence relating to these crimes, provided that they are listed in Article 237 § 3 of the CCP.[62] If evidence of the so-called non-listed crimes has been found, the trial use of this evidence is unacceptable, due to the reasons pointed out above. The consequence of this statement is the argument that the final extension of the limitation period provided for in Article 102 § 2 of the PC as proposed should not take place, despite the actions taken by the prosecutor.

When we assume that it is not admissible for the prosecutor to use evidence obtained beyond the subjective and objective boundaries listed in Article 237 of the CCP, and hence it should not have the effect indicated in the proposed Article 102 of the CCP, a question arises, however, whether such an interpretation is consistent with the content of Article 168a of the CCP? This provision states that

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[58] As in R. Koper, *op. cit.*, p. 34: J. Skorupka, *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego…*, 2020, p. 585; M. Rogalski, *op. cit.*, p. 4029.

[59] Pursuant to Article 106 of the PC of 1969, a view was expressed that the cessation of the limitation period caused by the initiation of criminal proceedings is of a permanent nature (see K. Marszał, *Przedawnienie w prawie karnym…*, 1972, p. 156). According to K. Marszał, "further actions as part of criminal proceedings are not relevant to the limitation period for amenability to a penalty under Article 106 of the PC, including the possible discontinuance and subsequent initiation or resumption of discontinued pre-trial proceedings" (*ibidem*). According to this author, this does not apply to cases where the initiation of criminal proceedings was defective from the very beginning due to an existing procedural obstacle (*ibidem*).

[60] See W. Jasiński, *Nielegalnie uzyskane dowody…*, pp. 555–556; idem, *Zakazy wykorzystania…*, pp. 2640–2641.

[61] See B. Janusz-Pohl, *Formalizacja i konwencjonalizacja…*, p. 467.

[62] See W. Jasiński, *Zakazy wykorzystania…*, p. 2641.

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evidence cannot be regarded as inadmissible solely on the grounds that it was obtained in violation of procedural rules or by means of the prohibited act referred to in Article 1 § 1 of the PC, unless the evidence was obtained in connection with the performance of official duties by a public official as a result of: manslaughter, intentional infliction of injury or deprivation of liberty. This regulation allows for an interpretation, according to which it is permissible to use evidence obtained with infringement of the procedural rules or with the use of the forbidden act referred to in Article 1 § 1 of the PC, disqualifying only evidence which was obtained in connection with carrying out official duties by a public servant as a result of killing, intentional infliction of injury or deprivation of freedom.[63] Under such an interpretation, even declaring as inadmissible the introduction by the prosecutor into the trial of evidence obtained outside the subject and object boundaries indicated in Article 237a of the CCP and making factual findings on their basis would result in the effect indicated in the proposed 102 § 2 of the PC, when the requirements of this provision are met.

However, the content of Article 168a of the CCP allows another interpretation. According to it, evidence cannot be declared inadmissible if the sole reason for such a decision is that it was obtained in breach of procedural law or through the offence referred to in Article 1 § 1 of the PC. It was also pointed out that Article 168a of the CCP may be interpreted as meaning that the evidence cannot be considered inadmissible on the sole ground that it was obtained in breach of the provisions of criminal procedure.[64] This allows stating that "if it is possible to point out reasons for the inadmissibility of evidence other than infringement of procedural law or criminal prohibition, the principle referred to in Article 168a of the CCP shall not apply".[65] It is presumed that this additional reason for the inadmissibility of evidence are constitutional and convention values and the standard of fair trial.[66] For these reasons, if the court finds it inadmissible to introduce into the trial the evidence obtained pursuant to Article 237a of the CCP outside the subjective and objective limits specified in Article 237 § 3 of the CCP, the effect referred to in the proposed Article 102 § of the PC should not occur.

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[63] The possibility of such interpretation is pointed out by C. Kulesza. See C. Kulesza, *Zakazy dowodowe*, [in:] C. Kulesza, P. Starzyński, *Postępowanie karne*, Warszawa 2017, p. 196; S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2016, p. 371. In more detail on the interpretation of Article 168a of the CCP, see W. Jasiński, *Nielegalnie uzyskane dowody…*, pp. 418–428 and the literature referred to therein.

[64] As in W. Jasiński, *Nielegalnie uzyskane dowody…*, p. 518; idem, *Zakazy wykorzystania…*, p. 2591. According to the author, the word "solely" used in Article 168a of the CCP is of crucial importance. This thesis refers to the view proposed by K. Lipiński (*Klauzula uadekwatniająca przesłanki niedopuszczalności dowodu w postępowaniu karnym (art. 168a k.p.k.)*, "Prokuratura i Prawo" 2016, no. 11, pp. 48–50).

[65] W. Jasiński, *Nielegalnie uzyskane dowody…*, p. 518.

[66] K. Lipiński, *op. cit.*, p. 50.

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4. Due to the proposed amendment of Article 102 § of the PC, a question arises whether the act of evidence-taking within the meaning of Article 102 § 2 of the PC should also be understood as the operational intelligence activity on the basis of which a reasonable suspicion of another offence has been established? The point is that evidence can be obtained both as a result of procedural activities such as searches, and as a result of operational intelligence activities, such as surveillance. A reasonable suspicion of committing a new offence not covered by the current proceedings may be the result of evidence obtained both by procedural acts (e.g., following explanations given by the suspect or witness testimony) as well as by acts of no procedural value: operational intelligence activities carried out in the course of a pre-trial proceedings.[67] In a situation where, following operating surveillance, a reasonable suspicion of a criminal offence emerged within the meaning of the proposed amendment of Article 102 § 2 of the PC, which is a criminal offence other than that covered by the surveillance or committed by a person other than that covered by the surveillance, doubt may arise as to whether there will be an effect of extending (cessation) of the limitation period for that offence.

It should be noted that the regulation provided for in Article 168b of the CCP has caused divergent views, similarly to the interpretation of Article 237a of the CCP. According to the first position, the content of Article 168b of the CCP allows for the use in the criminal trial of materials from surveillance obtained outside the objective and subjective scope defined in the order of surveillance.[68] According

[67] I use the term "operational intelligence activity" (Pol. *czynności operacyjno-rozpoznawcze*) as defined by A. Taracha (*Czynności operacyjno-rozpoznawcze – aspekty kryminalistyczne i kryminalistyczne*, Lublin 2006, p. 25). According to this author, the operational intelligence activities have the following characteristics: (1) they are activities of state authorities, (2) performed secretly or confidentially, (3) based on a statutory basis, (4) performing an information, detection, prevention and evidence-collecting function. The contentious issue was the admissibility of taking operational intelligence procedures during criminal proceedings. See *ibidem*, pp. 212–215. See also D. Szumiło-Kulczycka, *Czynności opresyjno-rozpoznawcze*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3, pp. 3238–3280. Currently, the most accepted is the thesis that such operational intelligence activities as surveillance, sting operation, and secret mail tracing may be carried out by competent authorities also during criminal trial. See I. Nowikowski, *Bezpieczeństwo państwa…*, p. 312 and the literature referred to therein. As regards the introduction to criminal proceedings of evidence collected in operational intelligence activities, see M. Błoński, *Przeprowadzanie na rozprawie dowodów uzyskanych w ramach czynności opresyjno-rozpoznawczych*, "Państwo i Prawo" 2017, no. 8, p. 78; D. Szumiło-Kulczycka, *Czynności operacyjno-rozpoznawcze i ich relacje do procesu karnego*, Warszawa 2012, pp. 158–319; eadem, *Wprowadzanie do procesu karnego dowodów z czynności operacyjno-rozpoznawczych*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3, pp. 3344–3397; A. Taracha, *op. cit.*, pp. 155–290.

[68] B. Gadecki, *Możliwość wykorzystania dowodu uzyskanego w wyniku kontroli operacyjnej. Glosa do uchwały Sądu Najwyższego składu 7 sędziów – Izba Karna z dnia 18 czerwca 2018 r., I KZP 4/18*, "Orzecznictwo Sądów Polskich" 2019, no. 1, pp. 84–85; G. Jędrzejewski, *Zakres czasowy stosowania art. 168b k.p.k. i art. 237a k.p.k.*, "Prokuratura i Prawo" 2018, no. 2, p. 7; S. Hoc, J. Kudła, [in:] *Zgoda następcza z art. 168b Kodeksu postępowania karnego*, ed. S. Hoc, LEX/el. 2016, thesis 3; D. Karczmar-

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to D. Karczmarska, this interpretation is supported by the principle of legalism, deletion of Article 19 (15a) from the Police Act and equivalents of this provision from other acts and the inclusion in the Code of Criminal Procedure of regulations expressly allowing for the use in criminal proceedings of information on non-listed crimes[69]. Furthermore, in the opinion of the author, the postulate to eliminate the materials concerning non-listed crimes does not deserve acceptance due to the content of Article 168a of the CCP. This provision expressly recognizes evidence collected as a result of committing a prohibited act. Based on this, D. Karczmarska has drawn the conclusion that if "materials coming from illegal wiretapping, i.e. fulfilling the criteria of the offence under Article 267 § 3 of the CCP may constitute the basis for factual findings, then information obtained in connection with legally conducted surveillance should be treated as even more valuable in procedural terms, even if the scope of information obtained as a result of this activity *in concreto* exceeds the subjective limitations conditioning the legality of ordering this activity".[70] This group of views include also the position of the Prosecutor General, contained in the application of 31 July 2018, addressed to the Polish Constitutional Tribunal.[71] In this application, the Prosecutor General requested to consider as unconstitutional the provision of Article 168b of the CCP understood in such a way that the phrase "another criminal offence prosecuted ex officio or a fiscal offence other than covered by the surveillance order" used therein covers only crimes with respect to which the court may give its consent to carry out surveillance. According to the Prosecutor General, the unconstitutional nature of such an interpretation arises from:

- the principle of the common good expressed in Article 1 of the Polish Constitution,
- the principles, interpreted from Article 2 of the Polish Constitution, of trust in the State and the law and social justice in connection with the preamble to the Constitution,
- Article 5 of the Polish Constitution,
- the principle of legality set out in Article 7 of the Polish Constitution,

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ska, *Dowody w znowelizowanej procedurze karnej – zagadnienia wybrane*, "Ius et Administratio" 2016, no. 3, p. 122; M. Kurowski, *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. D. Świecki, vol. 1, Warszawa 2017, p. 637; idem, *Art. 168(b) Wprowadzenie dowodów z kontroli operacyjnej*, [in:] *Kodeks postępowania karnego*, vol. 1: *Komentarz aktualizowany*, ed. D. Świecki, LEX/el. 2020, thesis 12; idem, *Wykorzystanie dowodu uzyskanego w wyniku kontroli operacyjnej*, [in:] *Kodeks postępowania karnego. Komentarz do zmian 2016…*, p. 181; B. Sitkiewicz, *Wykorzystanie dowodów uzyskanych w ramach kontroli operacyjnej oraz podsłuchu procesowego*, [in:] *Postępowanie karne po nowelizacji z dnia 11 marca 2016 r.*, ed. A. Lach, Warszawa 2017, pp. 103, 110–113.

[69] D. Karczmarska, *op. cit.*, pp. 121–122.

[70] *Ibidem*, p. 122.

[71] Wniosek Prokuratora Generalnego z dnia 31 lipca 2018 r. skierowany do Trybunału Konstytucyjnego, https://ipo.trybunal.gov.pl/ipo/view/pprawa.xhtml?&pokaz=dokumenty&sygnatura=K%206/18 (access: 10.2.2022).

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− Article 31 (1) and (2) sentence 1, Article 45 (1), Article 82 and Article 83 of the Polish Constitution.

It was stated in the explanatory memorandum of the application that the legislature's intention behind the adoption of Article 168b of the CCP was to use in criminal proceedings evidence of any criminal offence prosecuted ex officio or of any fiscal offence committed by any person covered by or not covered by a surveillance order.[72]

According to the second position, the regulation contained in Article 168b of the CCP allowing the use in criminal proceedings of evidence obtained outside the subjective and objective limitations indicated in the decision to order surveillance, raises doubts from the point of view of the constitutional principle of proportionality or standards defined by the case law of the European Court of Human Rights and the Polish Constitutional Tribunal.[73]

According to the third position, Article 168b of the CCP does not authorize the use in criminal proceedings of material obtained from surveillance concerning another offence or a person other than that covered by the judicial order for surveillance.[74] The consequence of the above-mentioned thesis is therefore

[72] See *ibidem*, p. 8. See also the discussion of the application in P. Daniluk, *Jeszcze raz o konstytucyjności art. 168b kodeksu postępowania karnego (W związku z wnioskiem Prokuratora Generalnego do Trybunału Konstytucyjnego)*, "Palestra" 2020, no. 12, pp. 10–20.

[73] K.T. Boratyńska, P. Czarnecki, M. Królikowski, *Komentarz do 168b*, [in:] *Kodeks postępowania karnego…*, pp. 489–490; S. Brzozowski, *Wykorzystanie dowodów uzyskanych w toku kontroli operacyjnej w kontekście art. 168b Kodeksu postępowania karnego*, "Palestra" 2016, no. 6, pp. 25–25; T. Grzegorczyk, *Kodeksowe legalizowanie w procesie karnym…*, pp. 335–338; P. Daniluk, *Instytucja tzw. zgody następczej…*, pp. 93–94; Z. Niemczyk, *Nowy kształt kontroli operacyjnej po zmianach ustawy o Policji i Kodeksu postępowania karnego*, "Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury" 2017, no. 2, pp. 23–24.

[74] See Wniosek Rzecznika Praw Obywatelskich Adama Bodnara, II.520.1.2016.ST, 29.4.2016, https://bip.brpo.gov.pl/sites/default/files/Do_TK_zgody_na_wykorzystanie_dowodow_uzyskanych_podczas_kontroli_operacyjnej.pdf (access: 10.4.2022), p. 5; P. Daniluk, *Jeszcze raz o konstytucyjności…*, pp. 8–10, 13–20; D. Gruszecka, *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego…*, 2020, pp. 368–370; eadem, *Problematyka dowodów nielegalnych*, [in:] *Proces karny*, ed. J. Skorupka, Warszawa 2018, pp. 346–348; C. Kulesza, *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2020, theses 8–10; J. Skorupka, *Prokonstytucyjna wykładnia przepisów prawa dowodowego w procesie karnym*, [in:] *Verba volant, scripts manent. Proces karny, prawo karne skarbowe i prawo wykroczeń po zmianach z lat 2015–2016. Księga pamiątkowa poświęcona Profesor Monice Zbrojewskiej*, eds. T. Grzegorczyk, R. Olszewski, Warszawa 2017, pp. 363–364; idem, *Dowody nielegalne w procesie karnym. Glosa do uchwały Sądu Najwyższego składu 7 sędziów – Izba Karna z dnia 28 czerwca 2018 r., I KZP 4/18*, "Orzecznictwo Sądów Polskich" 2019, no. 1, pp. 74–78; R.A. Stefański, *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego*, vol. 2, thesis 4; D. Szumiło-Kulczycka, *Dalsze wykorzystywanie materiałów z kontroli operacyjnej (uwagi na tle art. 168b k.p.k.*, "Państwo i Prawo" 2018, no. 10, pp. 115–118; eadem, *Poszukiwanie dowodów*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3, pp. 3362–3365; resolution of the Supreme Court of the panel of 7 judges of 28 June 2018, I KZP 4/18, LEX no. 2509692. See also

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that the phrase "another criminal offence prosecuted ex officio or a fiscal offence other than covered by the surveillance order" in the wording of Article 168b of the CCP covers only those offences in respect of which the court may agree to order surveillance, including those referred to in Article 19 (1) of the Police Act of 6 April 1990 (Journal of Laws of 2017, item 2137, as amended)[75]. It is indicated that a different solution, taking into account the literal wording of Article 168b of the CCP, would raise objections as to the conformity with the standard of fair trial[76] and the constitutional and convention requirements for the specificity and concreteness of the grounds for interference with the secret of communication.[77]

According to the presented interpretations of Article 168b of the CCP, it can be stated that accepting the first and second positions and applying them to the proposed Article 102 § 2 of the CCP would lead to an extension of the limitation period for the crime found in the course of operational activities, even if this crime is not listed, for example, in Article 19 (1) of the Police Act of 6 April 1990 (Journal of Laws 2020, item 360, as amended). This would occur when the information from surveillance in the circumstances set out in the proposed Article 102 § 2 of the PC led to a reasonable suspicion of committing a crime that has not been subject to criminal proceedings so far. On the other hand, according to the third position, getting in the course of surveillance a reasonable suspicion of a committed offence which was not covered by the scope of the surveillance and did not fall within the list of offences to which that surveillance could be applied should not have the effect pointed out in proposed Article 102 § 2 of the PC.

In responding to these views, a solution similar to the view expressed in Article 237a of the CCP may be proposed. It should therefore be accepted that surveillance, if carried out in accordance with the requirements set out in Article 19 (1) of the Police Act of 1990, during which materials were obtained exceeding its subjective or objective limits specified in the court's order of surveillance and telephone conversations recording, is not illegal.[78] However, in view of the constitutional and convention reservations raised regarding the use of evidence of offences not listed in Article 19 (1) of the Police Act, it should be assumed that Article 168b of the CCP covers only those offences in respect of which the court may agree to the order of surveillance, including those referred to in Article 19 (1) of the Police

substantiation for the decision of the Supreme Court – Criminal Chamber of 22 May 2019, I KZP 2/19, OSP 2020, no. 3, pp. 60–61.

[75] As in resolution of the Supreme Court of the panel of 7 judges of 28 June 2018, I KZP 4/18, LEX no. 2509692.

[76] See D. Gruszecka, *Komentarz do art. 168b…*, pp. 368–370. See also M. Rogalski, *op. cit.*, p. 4069.

[77] See P. Daniluk, *Instytucja tzw. zgody następczej…*, p. 91.

[78] See W. Jasiński, *Nielegalnie uzyskane dowody…*, p. 576; idem, *Zakazy wykorzystania…*, pp. 2663–2664.

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Act of 6 April 1990 (Journal of Laws 2017, item 2137, as amended). For these reasons, obtaining during surveillance any piece of evidence about an offence for which the surveillance is not admissible, should not have the effect specified in the proposed Article 102 of the PC.

This position is not undermined by the wording of Article 168a of the CCP. In support of that finding, reference may be made to the view that Article 168a of the CCP does not cover operational intelligence activities.[79] However, if we assume that Article 168a of the CCP applies to the regulation referred to in Article 168b of the CCP[80], the interpretation of Article 168a of the CCP described above may be applied, according to which evidence cannot be deemed inadmissible, e.g., solely on the ground that it was obtained in breach of the provisions of criminal procedure.[81] In order for evidence to be classified as above, there must be other grounds for inadmissibility. These include constitutional and convention-based reasons and the fair trial standard. The above-mentioned reservations concerning the use in criminal proceedings of evidence obtained in relation to an offence not listed in Article 19 (1) of the Police Act give rise to considering that evidence as inadmissible.

This allows us to consider the use of such evidence in criminal proceedings as inadmissible. It is also rightly stated that the systemic and teleological interpretation supports the position that in the event of an accidental exceeding the subjective scope of surveillance, it is possible to use evidence relating to these crimes, provided that they are listed in Article 19 (1) of the Police Act and are only related to offences for which the court may consent to perform the surveillance.[82] If evidence of the so-called non-listed crimes has been found, the trial use of this evidence is unacceptable, due to the reasons pointed out above. The consequence of this statement is the position that the extension of the limitation period set out in draft Article 102 § 2 of the PC should not take place.

5. One should support the reservations made in the opinion of the Supreme Court Research and Analyses Office that in view of the content of the proposed Article 102 § 2 of the PC is not clear enough as to whether it is about an evidence-taking step that took place after the reasonable suspicion of a crime, or also taking place earlier, from which such a suspicion arose.

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[79] Idem, *Nielegalnie uzyskane dowody*…, p. 510 and the literature referred to therein; idem, *Zakazy wykorzystania*…, p. 2589.

[80] As in S. Brzozowski, *Dopuszczalność dowodu w kontekście regulacji art. 168a k.p.k.*, "Przegląd Sądowy" 2016, no. 10, pp. 63–64.

[81] As in W. Jasiński, *Nielegalnie uzyskane dowody*…, p. 518; idem, *Zakazy wykorzystania*…, p. 2591. According to this author, the word "solely" used in Article 168a of the CCP is of crucial importance. This thesis refers to the view proposed by K. Lipiński (*op. cit.*, pp. 48–50).

[82] See W. Jasiński, *Zakazy wykorzystania*…, pp. 2663–2664; idem, *Nielegalnie uzyskane dowody*…, p. 576.

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6. It seems reasonable to state that the proposed amendment to Article 102 of the PC referred to the view expressed in the literature, according to which Polish law approaches the issue of cessation and suspension of the limitation period in an overly restrictive way.[83] This thesis is accompanied by the statement that the list of circumstances that cause the cessation or suspension of the limitation period is much wider in other criminal law systems than in Poland.[84]

7. Adopting the solution introduced by the Act of 13 June 2019 amending the Penal Code and some other acts, in the draft Act of 16 September 2021, and in the Act of 7 July 2022 amending the act – Penal Code and certain other acts would significantly expand the list of reasons justifying the extension of the limitation period compared to the current content of Article 102 of the PC. If the limitation period is combined with the commencement of proceedings in the case, any actions carried out prior to the issuance of the decision on the commencement of the investigation or enquiry pursuant to Article 308 of the CCP, aimed at securing traces and evidence of a crime against their loss, deformation or destruction in urgent cases, are treated as procedural actions resulting in the commencement of proceedings.[85] In this case, the situational context means that despite the absence of a decision on the initiation of investigation or enquiry, we are already dealing with the initiation of proceedings, which produces the effect specified in Article 102 of the CCP. Therefore, it should be assumed that the proposed amendment of Article 102 of the CCP does not concern the situation referred to in Article 308 of the CCP, because if the need to carry out evidence-taking appeared, this very circumstance, without the need to amend Article 102 of the CCP, would result in the consequence provided for in this footnote. Therefore, it may be assumed that the legislature wanted to combine the cessation of the running of the limitation period with the performance of an evidence-taking act, which would make it plausible that the crime had been committed, but which was not covered by necessary actions related to the newly disclosed act, which raises doubts.

8. Activities which in the light of the amendment may prolong the limitation periods are, in some cases, classified in forensic science as external sources of first

[83] As in J. Czabański, M. Warchoł, *Przerwa i zawieszenie biegu przedawnienia – uwagi de lege ferenda*, "Prokuratura i Prawo" 2007, no. 10, pp. 50–51.

[84] *Ibidem*, p. 51.

[85] As regards urgent activities, see J. Skorupka, *Postępowanie w niezbędnym zakresie*, [in:] *System Prawa Karnego Procesowego*, vol. 10: *Postępowanie przygotowawcze*, ed. R.A. Stefański, Warszawa 2016, pp. 255–399. See also W. Grzeszczyk, *Postępowanie przygotowawcze w kodeksie postępowania karnego*, Kraków 1998, pp. 56–57; A. Kaucz, B. Myrna, *Wszczęcie postępowania przygotowawczego w świetle kodeksu postępowania karnego*, "Nowa Kodyfikacja Prawa Karnego" 2002, vol. 11, pp. 168–172; S. Stachowiak, *Wszczęcie postępowania przygotowawczego a czynności sprawdzające*, "Prokuratura i Prawo" 1999, no. 9, pp. 12–14.

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information.[86] These sources contain information provided by individuals who have not had any contact with the law enforcement authorities in a spontaneous manner (e.g., by victims under threat of an unlawful act) or relatively spontaneously when that person was obliged to report under the relevant legislation.[87] The literature states that such information should be received and assessed with caution.[88] This is because despite being usually true, such information happens to be false when the reporting person is motivated by revenge, makes a false report, or his actions are based on pathological grounds.[89] In the context of these observations, it is worth quoting the view of W. Daszkiewicz, who stated that the likelihood of committing a crime must include the act itself, the criteria which make the act a criminal offence, the appropriate degree of harmfulness of the act and the fact that the amenability to a penalty for this offence is not revoked.[90] Therefore, it can be considered premature to infer on the basis of these activities that there is a reasonable suspicion that another crime has been committed within the meaning of the proposed Article 102 § 2 of the PC.

## CONCLUSIONS

The discussion allowed us to conclude that the proposed amendment to Article 102 of the PC does not guarantee that the time of occurrence of the circumstances justifying the extension of the limitation period for amenability to a penalty is precisely determined. The limitation period should be set in such a way as to allow the length of that period to be precisely determined. It determines the cessation of amenability to a penalty and hence the admissibility or inadmissibility of criminal proceedings. This therefore justifies the finding that that legislation does not fulfil the guarantee (protection) function relating to statutes of limitation as a precondition of a criminal trial. For these reasons, the solution offered in proposed Article 102 § 2 of the PC should be considered highly debatable.

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[86] See T. Hanausek, *Kryminalistyka. Zarys wykładu*, Kraków 2005, p. 79; E. Gruza, [in:] E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka – czyli rzecz o metodach śledczych*, Warszawa 2011, p. 31; Z. Czeczot, T. Tomaszewski, *Kryminalistyka ogólna*, Toruń 1996, p. 31.

[87] T. Hanausek, *op. cit.*, p. 79.

[88] *Ibidem*, p. 75. See also Z. Czeczot, T. Tomaszewski, *op. cit.*, p. 31.

[89] T. Hanausek, *op. cit.*, p. 75; Z. Czeczot, T. Tomaszewski, *op. cit.*, p. 31, E. Gruza, *op. cit.*, pp. 31–32.

[90] W. Daszkiewicz, *Proces karny. Część ogólna*, Poznań 1996, p. 37. See also R.A. Stefański, *Wszczęcie śledztwa lub dochodzenia*, [in:] J. Bratoszewski, L. Gardocki, Z. Gostyński, S. Przyjemski, R.A. Stefański, S. Zabłocki, *Kodeks postępowania karnego. Komentarz*, vol. 2, Warszawa 1998, pp. 34–35; S. Cora, *Przebieg postępowania przygotowawczego. Wszczęcie postępowania przygotowawczego*, [in:] *System Prawa Karnego Procesowego*, vol. 10, pp. 592–594.

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## REFERENCES

### Literature

Andrejew I., [in:] I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem*, Warszawa 1973.
Andrejew I., *Polskie prawo karne w zarysie*, Warszawa 1980.
Banasik K., *Przedawnienie w prawie karnym w systemie kontynentalnym i anglosaskim*, Warszawa 2013.
Błoński M., *Przeprowadzanie na rozprawie dowodów uzyskanych w ramach czynności opresyjno-rozpoznawczych*, "Państwo i Prawo" 2017, no. 8.
Błoński M., *Zakres przedmiotowy i podmiotowy podsłuchu procesowego*, "Palestra" 2012, no. 7–8.
Boratyńska K.T., Czarnecki P., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. A. Sakowicz, Warszawa 2018.
Boratyńska K.T., Czarnecki P., Królikowski M., *Komentarz do 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. A. Sakowicz, Warszawa 2018.
Brodzisz Z., *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2020.
Brodzisz Z., *Wszczęcie postępowania*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2020.
Brzozowski S., *Dopuszczalność dowodu w kontekście regulacji art. 168a k.p.k.*, "Przegląd Sądowy" 2016, no. 10.
Brzozowski S., *Wykorzystanie dowodów uzyskanych w toku kontroli operacyjnej w kontekście art. 168b Kodeksu postępowania karnego*, "Palestra" 2016, no. 6.
Cieślak M., *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1990.
Cora S., *Przebieg postępowania przygotowawczego. Wszczęcie postępowania przygotowawczego*, [in:] *System Prawa Karnego Procesowego*, vol. 10: *Postępowanie przygotowawcze*, ed. R.A. Stefański, Warszawa 2016.
Czabański J., Warchoł M., *Przerwa i zawieszenie biegu przedawnienia – uwagi de lege ferenda*, "Prokuratura i Prawo" 2007, no. 10.
Czeczot Z., Tomaszewski T., *Kryminalistyka ogólna*, Toruń 1996.
Daniluk P., *Instytucja tzw. zgody następczej po nowelizacji z 11 marca 2016 r. w świetle standardów konstytucyjnych i konwencyjnych*, "Studia Prawnicze" 2017, no. 3(211), **DOI: https://doi.org/10.37232/sp.2017.3.3**.
Daniluk P., *Jeszcze raz o konstytucyjności art. 168b kodeksu postępowania karnego (W związku z wnioskiem Prokuratora Generalnego do Trybunału Konstytucyjnego)*, "Palestra" 2020, no. 12.
Daszkiewicz W., *Proces karny. Część ogólna*, Poznań 1996.
Dudka K., [in:] K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, Warszawa 2015.
Eichstaedt K., *Komentarz do art. 237a*, [in:] B. Augustyniak, K. Eichstaedt, M. Kurowski, D. Świecki, *Kodeks postępowania karnego. Komentarz*, vol. 1, Warszawa 2015.
Eichstaedt, K., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz do zmian 2016*, ed. D. Świecki, Warszawa 2016.
Eichstaedt K., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. D. Świecki, vol. 1, Warszawa 2017.
Gadecki B., *Możliwość wykorzystania dowodu uzyskanego w wyniku kontroli operacyjnej. Glosa do uchwały Sądu Najwyższego składu 7 sędziów – Izba Karna z dnia 18 czerwca 2018 r., I KZP 4/18*, "Orzecznictwo Sądów Polskich" 2019, no. 1.
Góral R., *Kodeks karny. Praktyczny komentarz*, Warszawa 1996.
Grajewski J., S. Steinborn, [in:] J. Grajewski, L.K. Parzycki, S. Steinborn, *Kodeks postępowania karnego. Komentarz*, vol. 1: *Komentarz do art. 1–424*, Warszawa 2013.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:04:58



Gruszecka D., *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2020.

Gruszecka D., *Problematyka dowodów nielegalnych*, [in:] *Proces karny*, ed. J. Skorupka, Warszawa 2018.

Gruza E., [in:] E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka – czyli rzecz o metodach śledczych*, Warszawa 2011.

Grzegorczyk T., *Kodeks postępowania karnego. Komentarz*, vol. 1: *Artykuły 1–467*, Warszawa 2014.

Grzegorczyk T., *Kodeksowe legalizowanie w procesie karnym przez nowelizację z 11 marca 2016 r. dowodów uzyskanych za pomocą przestępstw lub naruszeniem przepisów postępowania albo poza granicami zgody udzielonej przez sąd na wkroczenie w sferę konstytucyjnie chronionych wolności jednostki*, [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018.

Grzegorczyk T., *Procesowa i pozaprocesowa kontrola rozmów jako legalne wkraczanie w sferę konstytucyjnie chronionej wolności i tajemnicy komunikowania się po zmianie przepisów w tej materii w 2011 r.*, [in:] *Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla*, eds. P. Kardas, T. Sroka, W. Wróbel, vol. 2, Warszawa 2012.

Grzeszczyk W., *Postępowanie przygotowawcze w kodeksie postępowania karnego*, Kraków 1998.

Hanausek T., *Kryminalistyka. Zarys wykładu*, Kraków 2005.

Hoc S., Kudła J., [in:] *Zgoda następcza z art. 168b Kodeksu postępowania karnego*, ed. S. Hoc, LEX/el. 2016.

Hofmański P., Sadzik E., Zgryzek K., *Kodeks postępowania karnego. Komentarz*, vol. 1–2, Warszawa 2011.

Janusz-Pohl B., *Formalizacja i konwencjonalizacja jako instrumenty analizy czynności karnoprocesowych w prawie polskim*, Poznań 2017.

Janusz-Pohl B., *Konkretyzacja uprawnienia prokuratora w zakresie wykorzystania dowodów uzyskanych w ramach tzw. wtórnej kontroli opresyjnej*, [in:] *Artes serviunt vitae sapientia imperat. Proces karny sensu largo. Rzeczywistość i wyzwania. Księga jubileuszowa Profesora Tomasza Grzegorczyka z okazji 70. urodzin*, eds. R. Olszewski, D. Świecki, J. Kamiński, P. Misztal, K. Rydz-Sybilak, A. Małolepszy, Warszawa–Łódź 2019.

Jasiński W., [in:] K.T. Boratyńska, Ł. Chojniak, W. Jasiński, *Postępowanie karne*, Warszawa 2016.

Jasiński W., *Nielegalnie uzyskane dowody w procesie karnym. W poszukiwaniu optymalnego rozwiązania*, Warszawa 2019.

Jasiński W., *Zakazy wykorzystania dowodów*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 2: *Dowody*, ed. J. Skorupka, Warszawa 2019.

Jędrzejewski G., *Zakres czasowy stosowania art. 168b k.p.k. i art. 237a k.p.k.*, "Prokuratura i Prawo" 2018, no. 2.

Kalinowski S., *Polski proces karny*, Warszawa 1971.

Karczmarska D., *Dowody w znowelizowanej procedurze karnej – zagadnienia wybrane*, "Ius et Administratio" 2016, no. 3.

Kaucz A., Myrna B., *Wszczęcie postępowania przygotowawczego w świetle kodeksu postępowania karnego*, "Nowa Kodyfikacja Prawa Karnego" 2002, vol. 11.

Kmiecik R., *Przedawnienie karalności*, [in:] *System Prawa Karnego Procesowego*, vol. 4: *Dopuszczalność procesu*, eds. M. Jeż-Ludwichowska, A. Lach, Warszawa 2015.

Kmiecik R., *Przedawnienie karalności*, [in:] T. Taras, E. Skrętowicz, R. Kmiecik, *Proces karny. Część ogólna*, Lublin 1975.

Kmiecik R., *Przerwa biegu terminu przedawnienia*, [in:] *System Prawa Karnego Procesowego*, vol. 4: *Dopuszczalność procesu*, eds. M. Jeż-Ludwichowska, A. Lach, Warszawa 2015.

Kmiecik R., *Z problematyki przedawnienia w warunkach współdziałania przestępnego (w świetle art. 102 k.k.)*, [in:] *Zmiany w polskim prawie karnym po wejściu w życie Kodeksu karnego z 1997 roku*, eds. T. Bojarski, K. Nazar, A. Nowosad, M. Szwarczyk, Lublin 2006.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:04:58



Koper R., *Podmiotowe i przedmiotowe granice stosowania podsłuchu w procesie karnym*, "Ius Novum" 2019, no. 1.

Kulesza C., *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2020.

Kulesza C., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2018.

Kulesza C., *Zakazy dowodowe*, [in:] C. Kulesza, P. Starzyński, *Postępowanie karne*, Warszawa 2017.

Kulik M., *Przedawnienie karalności i przedawnienie wykonywania kary w polskim prawie karnym*, Warszawa 2014.

Kurowski M., *Art. 168(b) Wprowadzenie dowodów z kontroli operacyjnej*, [in:] *Kodeks postępowania karnego*, vol. 1: *Komentarz aktualizowany*, ed. D. Świecki, LEX/el. 2020.

Kurowski M., *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. D. Świecki, vol. 1, Warszawa 2017.

Kurowski M., *Wykorzystanie dowodu uzyskanego w wyniku kontroli operacyjnej*, [in:] *Kodeks postępowania karnego. Komentarz do zmian 2016*, ed. D. Świecki, Warszawa 2016.

Lipiński K., *Klauzula uadekwatniająca przesłanki niedopuszczalności dowodu w postępowaniu karnym (art. 168a k.p.k.)*, "Prokuratura i Prawo" 2016, no. 11.

Łosicka A., *Procesowe pojęcie sprawy*, "Prokuratura i Prawo" 2013, no. 3.

Machlańska J., *Procesowe wykorzystanie podsłuchu w nowelizacji Kodeksu postępowania karnego oraz niektórych innych ustaw z dnia 11 marca 2016 r. w świetle prawa do obrony*, "Studia Iuridica Lublinensia" 2016, vol. 25(4), **DOI: https://doi.org/10.17951/sil.2016.25.4.129**.

Marek A., *Prawo karne*, Warszawa 2001.

Marszał K., *Przedawnienie w prawie karnym*, Warszawa 1972.

Marszał K., *Przedawnienie w prawie karnym wymaga zmian*, [in:] *Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla*, eds. P. Kardas, T. Sroka, W. Wróbel, vol. 2, Warszawa 2012.

Marszał K., *Wprowadzenie. Zastrzeżenie wyłączności podstawy ustawowej stosowania środków przymusu w polskim procesie karnym*, [in:] *Stosowanie środków przymusu w procesie karnym. Problem karnoprocesowych ograniczeń praw obywatelskich*, eds. K. Amelung, K. Marszał, Katowice 1990.

Marszał K., *Zastrzeżenie wyłączności podstawy ustawowej stosowania środków przymusu w polskim procesie karnym*, [in:] *Stosowanie środków przymusu w procesie karnym. Problem karnoprocesowych ograniczeń praw obywatelskich*, eds. K. Amelung, K. Marszał, Katowice 1990.

Niemczyk Z., *Nowy kształt kontroli operacyjnej po zmianach ustawy o Policji i Kodeksu postępowania karnego*, "Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury" 2017, no. 2.

Nowikowski I., *Bezpieczeństwo państwa a prawa oskarżonego w polskim prawie karnym procesowym (kwestie wybrane)*, "Teka Komisji Prawniczej PAN" 2018, no. 2.

Nowikowski I., *Glosa do wyroku SN z dnia 12 III 1979 r.*, OSPiKA 1980, no. 7–8.

Pohl Ł., *Prawo karne. Wykład części ogólnej*, Warszawa 2013.

Rogalski M., *Czynności ingerujące w wolność komunikowania się*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019.

Schaff L., *Zakres i formy postępowania przygotowawczego*, Warszawa 1961.

Siewierski M., [in:] J. Bafia, J. Bednarzak, M. Flemming, S. Kalinowski, H. Kempisty, M. Siewierski, *Kodeks postępowania karnego. Komentarz*, Warszawa 1976.

Sitkiewicz B., *Wykorzystanie dowodów uzyskanych w ramach kontroli operacyjnej oraz podsłuchu procesowego*, [in:] *Postępowanie karne po nowelizacji z dnia 11 marca 2016 r.*, ed. A. Lach, Warszawa 2017.

Skorupka J., *Dowody nielegalne w procesie karnym. Glosa do uchwały Sądu Najwyższego składu 7 sędziów – Izba Karna z dnia 28 czerwca 2018 r., I KZP 4/18*, "Orzecznictwo Sądów Polskich" 2019, no. 1.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:04:58



Skorupka J., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2015.
Skorupka J., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2018.
Skorupka J., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Skorupka, Warszawa 2020.
Skorupka J., *Postępowanie w niezbędnym zakresie*, [in:] *System Prawa Karnego Procesowego*, vol. 10: *Postępowanie przygotowawcze*, ed. R.A. Stefański, Warszawa 2016.
Skorupka J., *Prokonstytucyjna wykładnia przepisów prawa dowodowego w procesie karnym*, [in:] *Verba volant, scripts manent. Proces karny, prawo karne skarbowe i prawo wykroczeń po zmianach z lat 2015–2016. Księga pamiątkowa poświęcona Profesor Monice Zbrojewskiej*, eds. T. Grzegorczyk, R. Olszewski, Warszawa 2017.
Skowron B., *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, Warszawa 2018.
Skowron B., *Komentarz do art. 303*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, Warszawa 2020.
Stachowiak S., *Wszczęcie postępowania przygotowawczego a czynności sprawdzające*, "Prokuratura i Prawo" 1999, no. 9.
Stefański R.A., *Komentarz do art. 168b*, [in:] *Kodeks postępowania karnego*, vol. 2: *Komentarz do art. 167–296*, eds. R.A. Stefański, S. Zabłocki, LEX/el. 2019.
Stefański R.A., *Komentarz do art. 237a*, [in:] *Kodeks postępowania karnego*, vol. 2: *Komentarz do art. 167–296*, eds. R.A. Stefański, S. Zabłocki, LEX/el. 2019.
Stefański R.A., *Wszczęcie śledztwa lub dochodzenia*, [in:] J. Bratoszewski, L. Gardocki, Z. Gostyński, S. Przyjemski, R.A. Stefański, S. Zabłocki, *Kodeks postępowania karnego. Komentarz*, vol. 2, Warszawa 1998.
Stefański R.A., Zabłocki S., *Kodeks postępowania karnego*, vol. 3: *Komentarz do art. 297–424*, LEX/el. 2021.
Steinborn S., *Funkcje systemu warunków dopuszczalności procesu*, [in:] *System Prawa Karnego Procesowego*, vol. 4: *Dopuszczalność procesu*, eds. M. Jeż- Ludwichowska, A. Lach, Warszawa 2015.
Szumiło-Kulczycka D., *Czynności opresyjno-rozpoznawcze*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019.
Szumiło-Kulczycka D., *Czynności operacyjno-rozpoznawcze i ich relacje do procesu karnego*, Warszawa 2012.
Szumiło-Kulczycka D., *Dalsze wykorzystywanie materiałów z kontroli operacyjnej (uwagi na tle art. 168b k.p.k.*, "Państwo i Prawo" 2018, no. 10.
Szumiło-Kulczycka D., *Poszukiwanie dowodów*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019.
Szumiło-Kulczycka D., *Wprowadzanie do procesu karnego dowodów z czynności operacyjno-rozpoznawczych*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019.
Śliwiński S., *Polski proces karny przed sądem powszechnym. Zasady ogólne*, Warszawa 1959.
Taracha A., *Czynności operacyjno-rozpoznawcze – aspekty kryminalistyczne i kryminalistyczne*, Lublin 2006.
Waltoś S., Hofmański P., *Proces karny. Zarys systemu*, Warszawa 2016.
Wiliński P., *Konstytucyjny standard legalności dowodu w procesie karnym*, [in:] *Proces krany w dobie przemian. Zagadnienia ogólne*, eds. S. Steinborn, K. Woźniewski, Gdańsk 2018.
Woźniewski K., *Decyzje prokuratora na podstawie art. 168b oraz art. 237a k.p.k.*, [in:] *System Prawa Karnego Procesowego*, vol. 8, part 3: *Dowody*, ed. J. Skorupka, Warszawa 2019.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:04:58



Zgryzek K., *Dowodzenie*, [in:] R. Koper, K. Marszał, J. Zagrodnik, K. Zgryzek, *Proces karny*, Warszawa 2019.

Zgryzek K., Ludwiczek A., Netczuk R., *Przedawnienie w prawie karnym – wybrane aspekty karno-procesowe*, [in:] *Współzależność prawa karnego materialnego i procesowego*, eds. Z. Ćwiąkalski, G. Artymiak, Warszawa 2009.

Zoll A., *Komentarz do art. 106*, [in:] K. Buchała, Z. Ćwiąkalski, M. Szewczyk, A. Zoll, *Komentarz do kodeksu karnego. Część ogólna*, Warszawa 1990.

## Online sources

Barczak-Oplustil A., Górowski W., Małecki M., Zontek W., Tarapata S., Wróbel W., Iwański M., *Opinia do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r.*, Kraków, 9.6.2019, https://obserwatoriumdemokracji.pl/wp-content/uploads/2019/06/opiniaKIPK_nowelizacja2019.pdf (access: 12.4.2022).

Biuro Studiów i Analiz Sądu Najwyższego, *Opinia do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, BSA II-021-112/19, https://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/2019.04.26%20-%20021-112-19%20-%20Opinia%20SN%20-%20ustawa%20o%20zm.%20ustawy%20-%20K.k.%20oraz%20niekto%CC%81rych%20innych%20ustaw.pdf (access: 10.5.2022).

Giezek J., Lipiński K., *Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku)*, https://bip.brpo.gov.pl/sites/default/files/Opinia%20Katedry%20Prawa%20Karnego%20Materialnego%20WPAE%20UWr%20do%20nowelizacji%20kodeksu%20karnego.pdf (access: 10.3.2022).

Kancelaria Prezydenta, Komunikat z dnia 28 czerwca 2019 r., https://k.prezydent.pl/prawo/wnioski-do-tk/komunikat-w-zwiazku-ze-skierowaniem-przez-prezydenta-rp-wniosku-do-tk,25668 (access: 10.5.2022).

Ośrodek Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych, *Opinia na temat projektu z dnia 25 stycznia 2019 r. o zmianie ustawy Kodeks karny oraz niektórych innych ustaw*, 11.3.2019, https://bip.brpo.gov.pl/sites/default/files/Opinia%20KRRP%20ws%20zmian%20w%20prawie%20karnym%2C%2011%20marca%202019.pdf (access: 10.5.2022).

Rzecznik Praw Obywatelskich, *Opinia do ustawy z dnia 16 maja 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, II.510177.2019, 20.5.2019, https://bip.brpo.gov.pl/sites/default/files/Opinia%20RPO%20dla%20Senatu%20ws%20zmian%20w%20prawie%20karnym,%2020%20maja%202019.pdf (access: 10.5.2022).

Wniosek Prokuratora Generalnego z dnia 31 lipca 2018 r. skierowany do Trybunału Konstytucyjnego, https://ipo.trybunal.gov.pl/ipo/view/pprawa.xhtml?&pokaz=dokumenty&sygnatura=K%206/18 (access: 10.2.2022).

Wniosek Rzecznika Praw Obywatelskich Adama Bodnara, II.520.1.2016.ST, 29.4.2016, https://bip.brpo.gov.pl/sites/default/files/Do_TK_zgody_na_wykorzystanie_dowodow_uzyskanych_podczas_kontroli_operacyjnej.pdf (access: 10.4.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
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## Legal acts

Act of 4 February 2011 amending the Code of Criminal Procedure and certain other acts (Journal of Laws 2011, no. 53, item 273).
Act of 11 March 2016 amending the Code of Criminal Procedure and certain other acts (Journal of Laws 2016, item 437).
Regulation of the Minister of Justice of 24 March 2010 – Rules of internal procedure of the general units of the Public Prosecutor's Office (consolidated text, Journal of Laws 2014, item 144).
Regulation of the Minister of Justice of 7 April 2016 – Rules of internal procedure of the general units of the Public Prosecutor's Office (consolidated text, Journal of Laws 2017, item 1206).

## Case law

Decision of the Supreme Court of 25 October 2012, IV KK 226/72, Legalis no. 546806.
Decision of the Supreme Court – Criminal Chamber of 22 May 2019, I KZP 2/19, OSP 2020, no. 3.
Judgment of the Court of Appeal in Katowice of 24 November 2017, II AKa 363/17, LEX no. 2461354.
Judgment of the Supreme Court of 12 March 1979, I KR 27/79, OSNKW 1979, no. 7, item 80.
Judgment of the Supreme Court of 22 September 1999, II KKN 526/98, LEX no. 1635368.
Judgment of the Constitutional Tribunal of 14 July 2020, Kp 1/19, LEX no. 3028994.
Resolution of the Supreme Court of 15 April 1971, VI KZP 79/70, OSNKW 1971, no. 6, item 84.
Resolution of the Supreme Court of the panel of 7 judges of 15 October 1992, I KZP 28/92, OSNKW 1992, no. 11–12, item 76.
Resolution of the Supreme Court of the panel of 7 judges of 28 June 2018, I KZP 4/18, LEX no. 2509692.

## ABSTRAKT

Przedmiotem rozważań są regulacje dotyczące przerwy biegu terminu przedawnienia karalności przestępstw zawarte w ustawie z dnia 13 czerwca 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, w projekcie ustawy o zmianie ustawy Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r. i w ustawie z dnia 7 lipca 2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw. Trybunał Konstytucyjny w wyroku z dnia 14 lipca 2020 r. (Kp 1/19) orzekł, że ustawa z dnia 13 czerwca 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw niezgodna jest w całości z art. 7 w zw. z art. 112 i art. 119 ust. 1 Konstytucji RP. Zdaniem Trybunału Konstytucyjnego przyczyną wadliwości owej ustawy było niezachowanie przez Sejm przewidzianego w Konstytucji trybu uchwalenia tej ustawy. Zgodnie z proponowaną regulacją jeżeli w toku wszczętego postępowania karnego powzięto uzasadnione podejrzenie popełnienia innego przestępstwa, to karalność tego nowo ujawnionego przestępstwa miała ulegać przedłużeniu w sposób określony w art. 102 § 1 Kodeksu karnego. Okolicznością, która powodowałaby wydłużenie (przerwę) przedawnienia karalności nowo ujawnionego przestępstwa, miałoby być uzasadnione podejrzenie popełnienia tego przestępstwa. W tym wypadku karalność tego przestępstwa ulegałaby przedłużeniu z dniem, w którym podjęto pierwszą czynność dowodową zmierzającą do ustalenia, czy przestępstwo to zostało popełnione. Autor krytycznie ocenił tę propozycję i wskazał argumenty kwestionujące zasadność tej nowelizacji Kodeksu karnego. Przeprowadzone rozważania pozwoliły na sformułowanie wniosku, że proponowana nowelizacja art. 102 Kodeksu karnego nie daje gwarancji dokładnego ustalenia czasu, w którym miałaby wystąpić okoliczność uzasadniająca wydłużenie przedawnienia karalności przestępstwa. Termin przedawnienia powinien być wyznaczony w taki sposób, który pozwala na precyzyjne ustalenie upływu tego terminu, decyduje on bowiem

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o ustaniu karalności przestępstwa, a tym samym dotyczy dopuszczalności albo niedopuszczalności procesu karnego. Ponadto nowelizacja ta nie daje gwarancji stwierdzenia zaistnienia uzasadnionego podejrzenia popełnienia przestępstwa. Uzasadnia to zatem stwierdzenie, że regulacja ta nie spełnia funkcji gwarancyjnej (ochronnej) związanej z przedawnieniem jako przesłanką procesu karnego. Z tych względów rozwiązanie zawarte w projektowanym art. 102 § 2 Kodeksu karnego należy uznać za wysoce dyskusyjne.

**Słowa kluczowe:** wydłużenie przedawnienia karalności przestępstwa; termin przedawnienia; Kodeks karny; postępowanie karne

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