Bartłomiej Nałęcz
Akademia Pomorska w Słupsku
ORCID: 0000-0002-6974-1435
bartlomiej.nalecz@apsl.edu.pl
https://doi.org/10.34858/api.1.2022.18

Suspicion of participation in an organized crime group as a reason for temporary arrest in Poland

Countries of European legal culture commonly provide grounds for interfering with the fundamental rights and freedoms of a suspect, including the suspect's personal freedom, starting from the preparatory stage of criminal proceedings. The Polish criminal procedure is not an exception. In most extreme cases, this interference occurs in the events of pre-trial detention, which at the preparatory stage is decided by the court acting at the request of the prosecutor. At the court stage, this will be decided by the court ex officio. What should be noted, is that in the Polish legal system pre-trial detention has been fully and precisely regulated.[1] This does not mean, however, that the application of isolation based on this institution remains free from interpretation difficulties. It should be noted that the previous jurisprudence has taken up numerous solutions to problematic issues, which resulted in significant discrepancies.[2] It may be puzzling, however, when there are no major doubts regarding the justification of the application of pre-trial detention due to the concern of

[1] J. Skorupka, *Limitacja tymczasowego aresztowania w polskim prawie karnym*, „PiP" 2012, No. 3, p. 64.

[2] For example, the interpretation of Art. 258 § 2 of the Code of Criminal Procedure In the judicature, there is a position according to which the basis expressed in this provision, in the absence of negative premises for the application of pre-trial detention, constitutes an independent condition for its application (including the decision of the SN of 26 February, 2019, II KK 178/18 , LEX No. 2625401; decision of the SA in Krakow of 11 July, 2019, II AKz 366/19, KZS 2019, No. 7-8, item 75). On the other hand, it is assumed that the mere threat of a severe penalty does not carry any real concern of the suspect interfering with the proper course of the proceedings, and the legislator does not introduce the assumption that it is necessary to secure it (including the decision of the SA in Krakow of 27 May, 2019, II AKz 279/19, KZS 2019, No. 7-8, item 65; decision of the SA in Krakow of 3 July, 2019, II AKz 303/19, KZS 2019, No. 7-8, item 74). It is worth noting that the Supreme Court referred to the above in the resolution of January 19, 2012, issued in the case I KZP 18/11 (see Resolution of the SN (7) of 19 January 2012, I KZP 18/11, OSNKW 2012, No. 1, item 1), opting for the first of the described above views, which should also affect the jurisprudence of common and military courts.

procedural criminal collusion per accusations of the suspect's or the accused's participation in an organized criminal group. Doubts, indeed, may transpire, which will be touched upon later.[3]

Before proceeding to the main considerations, it is necessary to present a few general remarks concerning pre-trial detention. In this context, it should be noted that it serves as one of the preventive measures used in Polish criminal proceedings. The purpose of applying these measures is to secure the proper course of the proceedings, and in exceptional cases to prevent the suspect (or, analogously, "the accused", at the stage of court proceedings) from committing a new, serious crime. What is important, is that these measures can only be used when the collected evidence shows a high probability that the person has committed the alleged offense. This circumstance is at the same time a general premise of all preventive measures, therefore it should be applied at the first stage of evaluating the legitimacy of their use. As an obvious consequence of this, the finding of probability is also required in the context of pre-trial detention.

Moreover, application of pre-trial detention requires simultaneous occurrence of other specific conditions. They can appear separately or cumulatively. Further arguments will focus on only one of them, namely the so-called real concern of procedural criminal collusion. This premise has its normative basis in Art. 258 § 1 point 2 of the CCP.

The concern of procedural criminal collusion concerns situations in which the suspect was to coax a false testimony or explanations, or unlawfully obstruct criminal proceedings in any other way, including destruction of documents, creating false evidence, etc. It should be emphasized that this is not about the possibility of the suspect initiating an attempt to escape or hide.[4]

Scientific studies of commentators and the decisions of Polish courts consistently show that only out-of-trial actions of the suspect, aimed at persuading witnesses or co-suspects to change testimonies or explanations, may justify the application of the pre-trial detention on the basis of procedural criminal collusion.[5] Verbal formulation of the line of defense in order to avoid criminal liability of a potential perpetrator, including submitting unsatisfactory explanations, or even refusal to provide them, serve as an implementation of the right to

[3] It should be noted that this article is of an outline character. Undoubtedly, the potential of the issue raised creates room for deliberations beyond the framework of the post-conference study.

[4] This concern is a separate premise referred to in Art. 258 § 1 point 2 of the CCP. apart from this discussion.

[5] K. Eichstaedt, *Komentarz do art. 258*, [in:] *Kodeks postępowania karnego. Komentarz. Tom I*, ed. D. Świecki, Warsaw 2018, p. 955; also, among others decision of the SN of 18 December, 2008, WZ 73/08, OSNwSK 2008, No. 1, item 2698.

defense, and therefore do not automatically constitute this premise.[6] In the context of the above-mentioned non-trial activity, the Supreme Court in Poland expressed the position that the mere acquaintance between the suspect and the witnesses or co-suspects does not yet raise the concern that they would take steps to persuade them to give false testimony, or otherwise unlawfully impede criminal proceedings. According to the Supreme Court, the discussed concern, as a rule, must be justified by specific circumstances indicating its existence, and above all by the suspect's earlier behavior undertaken for this particular purpose, as well as by the behavior of other persons. Its existence cannot be derived only from a hypothetical presumption of the suspect taking such actions. The concern of deception is also not justified by the fact that the suspect knew most of the witnesses personally, especially in a situation where it was not found that he was trying to influence the witnesses.[7] It should be emphasized that, in principle, the above position is consistently expressed by the Supreme Court.

As indicated, this dynamic is based on an existing principle. It is a natural feature of most rules that there are grounds for derogating. The analysis of the Polish case law of common courts shows that the allegation of acting in an organized criminal group is such an exception. It expresses a very interesting position, according to which participation in organized criminal structures is associated with a specific form of relations and mutual connections and dependencies between participants of this type of criminal activity. This, in turn, gives rise to the presumption that they may attempt tampering and other unlawful actions obstructing the proceedings. The justification is sought through an assumption of the nature of such a group: characterized by specific ties, flow of information, as well as a certain type of solidarity between its members.[8] It is also argued that a feature of each criminal group is, inter alia, hierarchical subordination, and the definition of strict rules governing its functioning.[9] It is even argued that the concern of deception based on the suspicion of participation in an organized group does not become outdated despite the questioning of all suspects, which does not constitute an end of the proceedings, even at the preparatory stage.[10] The application of pre-trial detention on the basis of the suspicion that the arrested person involvement in an organized criminal group, due

[6] See among others judgment of the SA in Warsaw of 1 September, 2009, II AKa 246/09, LEX No. 782354; decision of the SA in Szczecin of 17 June, 2020, II AKz 327/20, OSASz 2020, No. 2, item 26-45.
[7] See the decision of the SN of 19 February, 2021, I KZ 35/20, LEX No. 3137795.
[8] See decision of the SA in Krakow of 15 September, 2017, II AKz 353/17, KZS 2017, No. 9, item 60.
[9] See decision of the SA in Katowice of 9 September, 2009, II AKz 592/09, LEX No. 553815.
[10] See decision of the SA in Krakow of 5 June, 2017, II AKz 201/17, KZS 2017, No. 7-8, item 19.

to the nature of such a group, is a very popular position in the jurisprudence of common courts.[11] It should be noted, however, that while approved by the majority, it is not the only one.[12]

The above creates a dissonance that is difficult to accept. On the one hand, we have the requirement of a court statement: that the suspect or the accused had already obstructed the proceedings, along with the inability to rely on acquaintance with witnesses and other co-suspects or co-accused. Otherwise, the application of pre-trial detention is inadmissible. On the other hand, however, we have a bond that characterizes participants of a criminal group; while functioning in this group has not been ascribed so far, but only highly probable. A critical stance should be taken against the latter position. There are several doubts of significant importance in its area.

Firstly, the acceptance of such an exception means that such a presumption can be applied to each crime where we have two or more perpetrators, e.g. in the case of an abusive action referred to in Art. 18 § 1 of the Criminal Code. The aspect of hierarchy, for instance, is perfectly applicable in cases of crime supervision, the essence of which is controlling (i.e. organizing and directing) a criminal action,[13] or even steering the behavior of another person by using them as a tool in committing a crime.[14] Also, in the context of the crime solicitation, the doctrine recognizes a specific dependence between the person or persons implementing the functional mark, directing the other's behavior or issuing an order to perform a specific deed.[15] This, however, results from the dependence defined by the subordination of the addressee of the command to the issuing of the command, manifesting presence of organizational or mental subordination.[16] It is therefore rightly noted that dependence that serves as a part of the essence of criminal solicitation includes dependence inherent in structures characteristic of organized crime.[17] It should be noted, however, that it is indeed possible to assign crime solicitation or

[11] See among others decision of the SA in Katowice of 20 October, 2010, II AKz 673/10, LEX No. 686876; decision of the SA in Wrocław of 21 November, 2012, II AKz 551/12, OSAW 2014, No. 1, item 309; decision of the SA in Krakow of 5 February, 2014, II AKz 34/14, KZS 2014, No. 2, item 43; decision of the SA in Krakow of 10 July, 2014, II AKz 265/14, KZS 2014, No. 7-8, item 71; decision of the SA in Katowice of 30 July, 2014, II AKz 466/14, LEX No. 1537373; decision of the SA in Białystok of 2 August, 2018, II AKz 299/18, LEX No. 2531897; decision of the SA in Katowice of 6 August, 2019, II AKz 674/19, LEX No. 2751436; decision of the SA in Gdańsk of 1 September, 2021, II AKz 805/21, unpublished; decision of the SA in Gdańsk of 1 September, 2021, II AKz 806/21, unpublished.

[12] Differently see decision of the SA in Wrocław of 16 May, 2018, II AKz 307/18, OSAW 2018, No. 1, item 375.

[13] See the judgment of the SN of 22 December, 1987, IV KR 412/87, OSNPG 1988, No. 12, item 123.

[14] See the judgment of the SN of 25 June, 2008, IV KK 39/08, OSNKW 2008, No. 9, item 73.

[15] Cf. P. Kardas, *Komentarz do art. 18,* [in:] *Kodeks karny. Część ogólna. Tom I. Część I. Komentarz do art. 1-52*, ed. W. Wróbel, A. Zoll, Warsaw 2016, p. 371 together with the literature provided there.

[16] *Ibidem*, p. 425 together with the literature provided there.

[17] L. Tyszkiewicz, *Komentarz do art. 18*, [in:] *Kodeks karny. Komentarz*, ed. M. Filar, Warsaw 2016, p. 96.

crime supervision within an organized criminal structure.[18] Nevertheless, it is necessary to focus on situations that do not indicate the existence of such a relationship. In this perspective, it can be said that the autonomously perceived activities in the forms discussed should be constituted as rules. In such a situation, a question should be asked: whether it is legitimate to extend the presumption of the existence of connections specific to the offense of multi-crime to the activities of a criminal group. What was supposed to be the rule in the offences alleged against persons who did not act in an organised manner will become the exception determined by an organized act. The above seems to falsify the uniqueness of the nature of the relations prevailing in an organized criminal group, adopted in the jurisprudence.[19]

Secondly, taking into consideration specific solidarity aspects, which cannot be unrelated to loyalty and the emotional or psychological spheres between possible perpetrators, stands in opposition to the nature of incrimination of the participants of an organized crime group. For the sake of the clarity of the arguments, it should be noted, however, that the above was referred solely to the issue of relations between its participants, which, in accordance with the cited jurisprudence, are to determine procedural criminal collusion by highlighting the features related to solidarity. These, however, do not in any way define a criminal group.[20] Indeed, the relations that are to create a particular desire to maintain the durability of the structure in the perspective of the forecasted process should be connected – obviously – with the subjective sphere. It seems that in this specific perspective, the perpetrator's mental attitude to functioning in the reality of such a group is determined by the motives for joining it. On the other hand, the motivational factors are irrelevant to the existence of an organized criminal group.[21] Identification of the perpetrator within a group is neither an aspect of defining an

[18] For more see M. Czyżak, *Sprawstwo polecające w zorganizowanej grupie przestępczej*, „Prok. i Pr." 2004, No. 6, pp. 30–45.

[19] A different approach is supported by the view that an organized group is something more advanced than complicity, and this is because it was formed to commit at least one crime (cf. judgment of the SN of 16 January 2008, IV KK 389/07, LEX No. 346607). Still, while characterizing the relation of its members, one cannot speak of any different or exceptional specificity, which, after all, would remain specific to a multi-issue.

[20] It should be emphasized once again that this study refers to the issue of the relation itself. Hence, in further arguments, the features of an organized crime group have been deliberately omitted, which remain indifferent to characterize the ties of its participants, such as the quantitative aspect, which requires min. three people (see, interalia, J. Piórkowska-Flieger, *Komentarz do art. 258*, [in:] *Kodeks karny. Komentarz*, ed. T. Bojarski, Warsaw 2016, p. 766).

[21] Z. Ćwiąkalski, *Komentarz do art. 258, art. 259*, [in:] *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. 212-277d*, eds. W. Wróbel, A. Zoll, Warsaw 2017, p. 1557 together with the jurisprudence given therein.

organized criminal character of the group.[22] Belonging to such a criminal group is determined solely by reasons supporting the recognition of the organizational nature of its activity and the group purpose of committing crimes. As it was aptly noted in the literature on the subject: the more proven features prove the existence of organizational connections between given persons, the easier it will be to assign the objection under Art. 258 of the Penal Code.[23] Finding the concern that the proper course of the proceedings will be disturbed by the suspect or the accused solely due to an accusation of participating in an organized criminal group seems therefore unfortunate; as long as it is based on a specific solidarity bond.

Finally, the construction of the premise under Art. 258 § 3 of the Code of Criminal Procedure, referring directly to the nature of the alleged act, which is a commission of a crime or willful misconduct, and committing a crime against life, health or general safety. Although its character, unique in relation to other grounds for applying pre-trial detention, raises justified reservations,[24] it is impossible to avoid an observation that the legislator defined the shape of the charge following an autonomous motivation for detention in the course of the criminal trial. Thus, it justifies a conclusion that the will of the Polish legislator is to be able to rely on the nature of the allegation in the context of the decision to apply pre-trial detention only to the extent specified by Art. 258 § 3 of the CCP.

Of course, it may also happen that in the course of the investigation there will be a need to strengthen the protection of the proceedings, foreseen by the prosecutor, even if the evidence gathered so far may not highlight it yet. It seems that the train of thought creating the motives of such a prediction can be assessed in terms of the hidden goal of the prosecutor who is applying for the pre-trial detention at this stage. Undoubtedly, the fact of accusing a given person of functioning in an organized criminal group may, in such a system, be a starting point allowing for the achievement of the main goal in advance, which in this case is to secure the proper course of the investigation in a manner consistent with the forecast. However, the European Court of Human Rights has recently commented on this matter, stating that the hidden aim of the prosecutor who requests the restriction of the suspect's personal freedom cannot be dominant.[25] It is impossible to disagree with this thesis. After all, the courts are not an automatic executor of the prosecutor's orders. On the contrary, the role of the courts is to properly control

[22] For more see B. Gadecki, *Branie udziału w zorganizowanej grupie przestępczej (art. 258 k.k.)*, „Prok. i Pr." 2008, No. 3, pp. 68–81.

[23] A. Michalska-Warias, *Zorganizowana grupa przestępcza w orzecznictwie*, „Prok. i Pr." 2013, No. 12, p. 112.

[24] See R. Kmiecik, *O lukach prawnych w systemie karnoprocesowych gwarancji wymiaru sprawiedliwości*, „Prok. i Pr." 2021, No. 4, pp. 12–13.

[25] The judgment of ECtHR of 18 February 2021, 65583/13, Azizov and Novruzlu v. Azerbaijan, LEX No. 3121475.

the conclusion in this respect, and to carefully analyze the need to keep the suspect or accused person in confinement.

In the light of the above synthetically presented observations, it should be postulated that when assessing the validity of applying pre-trial detention the court should not rely on an allegation that a suspect functions in an organized criminal group. It is especially crucial in cases when it is the only condition for applying for pre-trial detention. First of all, refraining from it will remove the discrepancies arising in the sphere of conflicting views on the requirement of behavior bearing the features of potentially impeding the conduct of proceedings with the use of the legal qualification of the allegation. This postulate applies to both the requesting public prosecutors and the courts adjudicating in this matter. Apart from re-orienting, unfortunately, a line of jurisprudence that is quite consistent in this respect, should also be unified, contrary to the current trend. There is no need to prove the role and importance of jurisprudence in this study. Closing the argument, it should be emphasized that from the citizen's point of view, the content of the provisions is reflected by the results of the decisions of courts and other bodies adjudicating on the freedoms and rights of individuals.[26]

Bibliography

Sources

Normative acts

1. Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as amended by Protocols No. 3, 5, 8 11, 14 and 15 supplemented by Protocols No. 1, 2, 4, 6, 7, 12, 13 and 16 (Journal of Laws, 1993, No. 61, item 284 as amended).
2. The Constitution of the Republic of Poland of 2 April, 1997 (Journal of Laws, No. 78, item 483 as amended).
3. The act of 6 June, 1997, Criminal Code (Journal of Laws, 2021, item 2345 as amended).
4. The act of 6 June, 1997, Code of Criminal Procedure (Journal of Laws, 2021, item 534 as amended).

[26] S.M. Wiącek, S. Żółtek, *Niekonstytucyjność normy ustalonej w drodze orzecznictwa Sądu Najwyższego*, [in:] *Jednolitość orzecznictwa. Standard – instrumenty – praktyka. Materiały z konferencji naukowej, Warszawa, Sąd Najwyższy, 21.11.2013*, eds. M. Grochowski, M. Raczkowski, S. Żółtek, Warsaw 2015, p. 49.

Jurisprudence

Jurisprudence of Supreme Court

1. Resolution of the SN (7) of 19 January 2012, I KZP 18/11, OSNKW 2012, No. 1, item 1.

Judgments

1. The judgment of the SN of 22 December 1987, IV KR 412/87, OSNPG 1988, No. 12, item 123.
2. The judgment of the SN of 16 January 2008, IV KK 389/07, LEX No. 346607.
3. The judgment of the SN of 25 June 2008, IV KK 39/08, OSNKW 2008, No. 9, item 73.

Decisions

1. The decision of the SN of 18 December 2008, WZ 73/08, OSNwSK 2008, No. 1, item 2698.
2. The decision of the SN of 26 February 2019, II KK 178/18, LEX No. 2625401.
3. The decision of the SN of 19 February 2021, I KZ 35/20, LEX No. 3137795.

Jurisprudence of courts of appeal

Judgments

1. The judgment of the SA in Warsaw of 1 September, 2009, II AKa 246/09, LEX No. 782354.

Decisions

1. The decision of the SA in Katowice of 9 September, 2009, II AKz 592/09, LEX No. 553815.
2. The decision of the SA in Katowice of 20 October, 2010, II AKz 673/10, LEX No. 686876.
3. The decision of the SA in Wroclaw of 21 November, 2012, II AKz 551/12, OSAW 2014, No. 1, item 309.
4. The decision of the SA in Krakow of 5 February, 2014, II AKz 34/14, KZS 2014, No. 2, item 43.
5. The decision of the SA in Krakow of 10 July, 2014, II AKz 265/14, KZS 2014, No. 7-8, item 71.
6. The decision of the SA in Katowice of 30 July, 2014, II AKz 466/14, LEX No. 1537373.
7. The decision of the SA in Krakow of 5 June, 2017, II AKz 201/17, KZS 2017, No. 7-8, item 19.

8. The decision of the SA in Krakow of 15 September, 2017, II AKz 353/17, KZS 2017, No. 9, item 60.
9. The decision of the SA in Wroclaw of 16 May, 2018, II AKz 307/18, OSAW 2018, No. 1, item 375.
10. The decision of the SA in Bialymstok of 2 August, 2018, II AKz 299/18, LEX No. 2531897.
11. The decision of the SA in Krakow of 27 May, 2019, II AKz 279/19, KZS 2019, No. 7-8, item 65.
12. The decision of the SA in Krakowie of 3 July, 2019, II AKz 303/19, KZS 2019, No. 7-8, item 74.
13. The decision of the SA in Krakowie of 11 July, 2019, II AKz 366/19, KZS 2019, No. 7-8, item 75.
14. The decision of the SA in Katowice of 6 August, 2019, II AKz 674/19, LEX No. 2751436.
15. The decision of the SA in Szczecin of 17 June, 2020, II AKz 327/20, OSASz 2020, No. 2, item 26-45.
16. The decision of the SA in Gdansk of 1 September, 2021, II AKz 805/21, unpublished.
17. The decision of the SA in Gdansk of 1 September, 2021, II AKz 806/21, unpublished.

Jurisprudence of European Court of Human Rights

1. The judgment of ECtHR of 18 February 2021, 65583/13, Azizov and Novruzlu v. Azerbijan, LEX No. 3121475.

Źródła

Akty normatywne

1. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. Nr 78, poz. 483 z późn. zm.).
2. Konwencja o ochronie praw człowieka i podstawowych wolności z dnia 4 listopada 1950 r. (Dz.U. z 1993 r. Nr 61, poz. 284 z późn. zm.).
3. Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (t.j. Dz.U. z 2021 r. poz. 2345 z późn. zm.).
4. Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (t.j. Dz.U. z 2021 r. poz. 534 z późn. zm.).

Orzecznictwo

Orzecznictwo Sądu Najwyższego

Uchwała

1. Uchwała SN(7) z 19.01.2012 r., I KZP 18/11, OSNKW 2012, nr 1, poz. 1.

Wyroki

1. wyrok SN z 22.12.1987 r., IV KR 412/87, OSNPG 1988, nr 12, poz. 123.
2. wyrok SN z 16.01.2008 r., IV KK 389/07, LEX nr 346607.
3. wyrok SN z 25.06.2008 r., IV KK 39/08, OSNKW 2008, nr 9, poz. 73.

Postanowienia

1. Postanowienie SN z 18.12.2008 r., WZ 73/08, OSNwSK 2008, nr 1, poz. 2698.
2. Postanowienie SN z 26.02.2019 r., II KK 178/18, LEX nr 2625401.
3. Postanowienie SN z 19.02.2021 r., I KZ 35/20, LEX nr 3137795.

Orzeczenia sądów apelacyjnych

Wyrok

1. Wyrok SA w Warszawie z 1.09.2009 r., II AKa 246/09, LEX nr 782354.

Postanowienia

1. Postanowienie SA w Katowicach z 9.09.2009 r., II AKz 592/09, LEX nr 553815.
2. Postanowienie SA w Katowicach z 20.10.2010 r., II AKz 673/10, LEX nr 686876.
3. Postanowienie SA we Wrocławiu z 21.11.2012 r., II AKz 551/12, OSAW 2014, nr 1, poz. 309.
4. Postanowienie SA w Krakowie z 5.02.2014 r., II AKz 34/14, KZS 2014, nr 2, poz. 43.
5. Postanowienie SA w Krakowie z 10.07.2014 r., II AKz 265/14, KZS 2014, nr 7-8, poz. 71.
6. Postanowienie SA w Katowicach z 30.07.2014 r., II AKz 466/14, LEX nr 1537373.
7. Postanowienie SA w Krakowie z 5.06.2017 r., II AKz 201/17, KZS 2017, nr 7-8, poz. 19.
8. Postanowienie SA w Krakowie z 15.09.2017 r., II AKz 353/17, KZS 2017, nr 9, poz. 60.
9. Postanowienie SA we Wrocławiu z 16.05.2018 r., II AKz 307/18, OSAW 2018, nr 1, poz. 375.
10. Postanowienie SA w Białymstoku z 2.08.2018 r., II AKz 299/18, LEX nr 2531897.

11. Postanowienie SA w Krakowie z 27.05.2019 r., II AKz 279/19, KZS 2019, nr 7-8, poz. 65.
12. Postanowienie SA w Krakowie z 3.07.2019 r., II AKz 303/19, KZS 2019, nr 7-8, poz. 74.
13. Postanowienie SA w Krakowie z 11.07.2019 r., II AKz 366/19, KZS 2019, nr 7-8, poz. 75.
14. Postanowienie SA w Katowicach z 6.08.2019 r., II AKz 674/19, LEX nr 2751436.
15. Postanowienie SA w Szczecinie z 17.06.2020 r., II AKz 327/20, OSASz 2020, nr 2, poz. 26-45.
16. Postanowienie SA w Gdańsku z 1.09.2021 r., II AKz 805/21, niepubl.
17. Postanowienie SA w Gdańsku z 1.09.2021 r., II AKz 806/21, niepubl.

Orzeczenie Europejskiego Trybunału Praw Człowieka

1. Wyrok ETPC z 18.02.2021 r., 65583/13, Azizov I Novruzlu v. Azerbejdżan, LEX nr 3121475.

Literature

1. Bojarski T. (ed.), *Kodeks karny. Komentarz,* Warszawa 2016.
2. Czyżak M., *Sprawstwo polecające w zorganizowanej strukturze przestępczej*, „Prok. i Pr.” 2004, No. 6, p. 30–45.
3. Ćwiąkalski Z., *Komentarz do art. 258, art. 259,* [w:] *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. 212-277d*, (eds.) W. Wróbel, A. Zoll, Warszawa 2017, s. 1557.
4. Eichstaedt E., *Komentarz do art. 258,* [w:] *Kodeks postępowania karnego. Komentarz. Tom I, Warszawa 2018.*
5. Filar M. (ed.), *Kodeks karny. Komentarz,* Warszawa 2016.
6. Gadecki B., *Branie udziału w zorganizowanej grupie przestępczej (art. 258 k.k.),* „Prok. i Pr.” 2008, No. 3, p. 68–81.
7. Grochowski M. (ed.), Raczkowski M. (ed.), Żółtek S. (ed.), *Jednolitość orzecznictwa. Standard – instrumenty – praktyka. Materiały z konferencji naukowej, Warszawa, Sąd Najwyższy, 21.11.2013*, Warszawa 2015.
8. Hoffmański P., Waltoś S., *Proces karny. Zarys systemu*, Warszawa 2016.
9. Kardas P., *Komentarz do art. 18,* [w:] *Kodeks karny. Część szczególna. Tom I, Część I. Komentarz do art. 1-52*, Warszawa 2016.

10. Kmiecik R., *O lukach prawnych w systemie karnoprocesowych gwarancji wymiaru sprawiedliwości*, „Prok. i Pr.” 2021, No. 4, p. 6–15.
11. Marszał K., *Proces karny*, Katowice 1998.
12. Michalska-Warias A., *Zorganizowana grupa przestępcza w orzecznictwie*, „Prok. i Pr.” 2013, No. 12, p. 100–116.
13. Piórkowska-Flieger J., *Komentarz do art. 258*, [w:] *Kodeks karny. Komentarz*, ed T. Bojarski, Warszawa 2016, art. 258, s. 766.
14. Skorupka J., *Limitacja tymczasowego aresztowania w polskim procesie karnym*, „PiP” 2012, No. 3, p. 55–64.
15. Świecki D. (ed.), *Kodeks postępowania karnego. Komentarz. Tom I*, Warszawa 2018.
16. Tyszkiewicz L., *Komentarz do art. 18*, [w:] *Kodeks karny. Komentarz*, ed. M. Filer, Warszawa 2016.
17. Wiącek S.M., Żółtek S., Niekonstytucyjność normy ustanowionej przez orzecznictwo Sądu Najwyższego, [w:] *Jednolitość orzecznictwa. Standard – instrumenty – praktyka. Materiały z konferencji naukowej, Warszawa, Sąd Najwyższy, 21.11. 2013*, (eds.) M. Grochowski, M. Raczkowski, S. Żółtek, Warszawa 2015.
18. Wróbel W. (ed.), Zoll A. (ed.), Kodeks karny. Część ogólna. Tom I. Część I. Komentarz do art. 1-52, Warszawa 2016.
19. Wróbel W. (ed.), Zoll A. (ed.), Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. 212-277d, Warszawa 2017.

1. Bojarski T. (ed.), *Penal Code Commentary*, Warsaw 2016.
2. Czyżak M., *Recommendation in an organized criminal structure*, „Prok.i Pr.” 2004, no. 6, pp. 30–45.
3. Ćwiąkalski Z., *Commentary on Art. 258, Art. 259*, [in:] *Penal Code. Part of the special. Volume II. Part II. Commentary on Art. 212-277d*, eds. W. Wróbel, A. Zoll, Warsaw 2017, art. 258, art. 259, p. 1557.
4. Eichstaedt E., *Commentary on Art. 258*, [in:] *Code of Criminal Procedure. Comment. Volume I*, ed. D. Świecki, Warsaw 2018, art. 258, p. 955.
5. Filar M. (ed.), *Penal Code. Commentary*, Warsaw 2016.
6. Gadecki B., *Taking part in an organized criminal group (Article 258 of the Penal Code)*, „Prok. and Pr.” 2008, no. 3, pp. 68–81.

7. Grochowski M. (ed.), Raczkowski M. (ed.), Żółtek S. (ed.), *Uniformity of jurisprudence. Standard – instruments – practice. Materials from the scientific conference, Warsaw, Supreme Court, 21.11.2013*, Warsaw 2015.
8. Hoffmański P., Waltoś S., *Criminal trial. System outline*, Warsaw 2016.
9. Kardas P., *Commentary on Art. 18*, [in:] *Penal Code. General part. Volume I. Part I. Commentary on Art. 1-52*, ed. W. Wróbel, A. Zoll, Warsaw 2016, art. 18, p. 371
10. Kmiecik R., *On legal gaps in the system of penal-procedural guarantees of the judiciary*, „Prok. i Pr." 2021, no. 4, pp. 12-13.
11. Marszał K., *Penal Code*, Katowice 1998.
12. Michalska-Warias A., *Organized criminal group in jurisprudence*, „Prok. i Pr." 2013, no. 12, p. 112.
13. Piórkowska-Flieger J., *Commentary on Art. 258*, [in:] *Penal Code. Commentary*, ed. T. Bojarski, Warsaw 2016, art. 258, p. 766.
14. Skorupka J., *Limitation of pre-trial detention in the Polish criminal trial*, „PiP" 2012, No. 3, p. 64.
15. Świecki D. (ed.) *Code of Criminal Procedure. Comment. Volume I*, Warsaw 2018.
16. Tyszkiewicz L., *Commentary on Art. 18*, [in:] *Penal code. Commentary*, ed. M. Filar, Warsaw 2016, art. 18, p. 96.
17. Wiącek S.M., Żółtek S., *Unconstitutionality of the norm established by the judicature of the Supreme Court*, [in:] "*Uniformity of jurisprudence. Standard – instruments – practice". Materials from the scientific conference Warsaw, Supreme Court, 21.11. 2013*, eds. M. Grochowski, M. Raczkowski, S. Żółtek, Warsaw 2015, p. 49.
18. Wróbel W. (ed.), Zoll A. (ed.), *Penal Code. Part of special. Volume I. Part I. Commentary on Art. 1-52*, Warsaw 2016.
19. Wróbel W. (ed.), Zoll A. (ed.), *Penal Code. Part of special. Volume II. Part II. Commentary on Art. 212-277d*, Warsaw 2017.

Key words: Criminal collusion, organized criminal group, pre-trial detention, prerequisite for court proceedings, penal jurisdiction, suspect, temporary arrest

Summary

The following paper is a grammatical interpretation of an elaborate speech from the I International Legal Conference of October 21, 2021, that expressed a critical stance against the judicial practice of expressing concern about possible obstruction of justice that could stem

from the suspicion of participation in an organized criminal group, which then could lead to consideration of using pre-trial detention. Although this practice reflects the commonly accepted jurisdictional position, several doubts can be raised in relation to it – these doubts are synthetically outlined in this publication. The final conclusion presents the postulate of refraining from relying on the fact that the suspect has been charged with participation in an organized criminal group when applying for pre-trial detention: especially when it serves as the sole condition that justifies its application.