

STATUS OF THE PARTY IN THE CUMULATIVE JUDGMENT PROCEEDINGS

STATUS STRONY W POSTĘPOWANIU W PRZEDMIOCIE WYDANIA WYROKU ŁĄCZNEGO

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Abstract

The objective of this paper is to solve the research problem of the question of who, according to the provisions of Article 574 of the Code of Criminal Procedure, can participate as a party in the proceedings for the issue of a cumulative judgment? The thesis that only the convicted party has the status of party in the cumulative judgment proceedings will be supported, since it is a case of *sui generis*, in which the ordinary procedure is modified due to the subject matter of the proceedings, which results from the inability to clearly qualify the proceedings for the jurisdictional or enforcement stage. *De lege ferenda* normative regulation of the convicted status has been proposed in chapter 60 of the Code of Criminal Procedure and amendment of the wording of Article 570 of the Code of Criminal Procedure, as well as granting the prosecutor the status of participant on the rights of the party in the proceedings on the issue of a cumulative judgment.

Keywords: criminal process, cumulative penalty, cumulative judgment, proceedings after a final court decision, parties to the process

Abstrakt

Założeniem niniejszego opracowania jest rozwiązanie problemu badawczego sprowadzającego się do pytania, kto stosownie do dyspozycji art. 574 *Kodeksu postępowania karnego* w postępowaniu w przedmiocie wydania wyroku łącznego może brać udział w charakterze strony? Udowodniona zostanie teza zgodnie z którą w postępowaniu w przedmiocie wydania wyroku łącznego status strony posiada tylko skazany, ze względu na to, iż jest to postępowaniu *sui generis*, w którym

dochodzi do modyfikacji trybu zwyczajnego ze względu na przedmiot tego postępowania, co wynika z braku możliwości jednoznacznego zakwalifikowania tego postępowania do fazy jurysdykcyjnej albo wykonawczej. *De lege ferenda* zaproponowano normatywne uregulowanie statusu skazanego w rozdziale 60 *Kodeksu postępowania karnego* oraz zmianę brzmienia art. 570 *Kodeksu postępowania karnego*, a także nadanie prokuratorowi statusu uczestnika na prawach strony w postępowaniu w przedmiocie wydania wyroku łącznego.

Słowa kluczowe: proces karny, kara łączna, wyrok łączny, postępowania po uprawnieniu się orzeczenia, strony procesu

Introduction

The existence of litigious parties is fundamental to the entire criminal proceedings model. In particular, if it is noted that a proceedings characterized by the absence of parties or their limited role is an inquisitorial process, which is subsequently submitted to the scope of implementation of the of transparency of the proceedings principle and the basis of the verdict, which in this case is essentially constituted by the documents collected during the proceedings. No one needs to be convinced that the choice of one of the forms of inquisitorial or contradictory or possibly mixed proceedings is of fundamental importance for the procedural guarantees of the parties involved in these proceedings, as is the procedure itself. In this sense, the complaint proceedings model aims to prevent arbitration of the procedural body decision, contributes to the impartiality and objectivity of the court, while the complaint itself defines the substantive and subjective framework of the initiated proceedings.

The problem of the parties to the proceedings is one of the fundamental issues of the criminal trial, so it is not surprising that in a situation where the legislator did not introduce a legal definition of the concept of “party” into the criminal procedure act, representatives of the doctrine proposed various definitions [Nowikowski 2016, 49-67; Grzegorzczuk 1998, 3-12]. Without engaging in detailed analyses of this issue, which would go far beyond the scope of this paper, it should be assumed in accordance with S. Waltoś and P. Hofmański that the party to the proceedings is an entity having a legal interest in a favorable decision on the subject of the proceedings [Waltoś and Hofmański 2023, 193].

It also requires a reminder that the following entities are commonly included in the main procedural parties: public prosecutor; aggrieved person; auxiliary prosecutors; private prosecutor; and accused person (suspect), who obtain this status depending on the stage of the proceedings. In the context of the issue of the cumulative judgment, it can be seen *prima facie* that the legislator in chapter 60 of the Code of Criminal Procedure¹ did not regulate the issues of the parties to the proceedings. There is therefore an investigative problem arising from the question of who, in accordance with the provisions of Article 574 CCP, may participate as a party to the proceedings in the matter of a cumulative judgment? In order to answer this question, it is necessary to examine the different functions performed by the parties to the proceedings in the context of a specific procedure, namely the cumulative judgment. In anticipation of detailed considerations, it should be argued that, in the case of a cumulative judgment, only the convicted party has the status of a party, since it is *a sui generis* proceeding in which the ordinary procedure is modified due to the subject matter of the proceeding, which results from the inability to explicitly qualify the proceeding for the jurisdictional or enforcement stage.

1. Convicted party status

According to Article 570 CCP, the court has the power to issue a cumulative judgment both on its own initiative and at the request of the convicted person or the prosecutor. In the context of the subject of these proceedings as a party to the proceedings, it should be noted that in the preliminary proceedings this issue was ruled by the content of Article 299 CCP, which explicitly considers the suspect as a passive party to the proceedings. A similar situation occurs in jurisdictional proceedings, in which, in accordance with Article 71 § 2 CCP the accused has the status of a party. In contrast, in chapter 60 CCP appears an entity designated as a convicted, without regulating the scope of their competences, as was done in the context of the suspect in Article 71 § 3 CCP. In the light of this concealment by the legislator, although it is possible to apply the provisions concerning the proceedings

¹ Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws of 2024, item 37 as amended [hereinafter: CCP].

before the court of first instance according to Article 574, this simplification is also not defective, since in the third chapter of the CCP, the convict is no longer mentioned among the parties to the proceedings.

Also in the literature of the subject he noted that due to the specificity of the proceedings on the issue of a cumulative judgment there is no procedural figure of the accused in the sense given to them by Article 71 CCP, pointing to the subject of these proceedings, and thus the decision of a cumulative sentence against a person sentenced by the judgments of different courts for crimes in conjunction [Kala 2001, 227]. It is also sufficient to mention that, unlike other proceedings conducted after the proceedings have become final, there is no discontinuation of a final judgment on guilt and it would not be possible to continue to determine the subject of the proceedings as an accused, which would be contrary to the content of Article 5 § 1 CCP and the principle of presumption of innocence contained therein. Referring to the doubts, why we are not dealing with a convict at the cassation or resumption stage, it is enough to mention that these proceedings are not basically limited to the correction of the criminal penalty itself. Although there is an exceptional appeal by an exceptional measure of appeal against a final decision due to the flagrant disproportion of the penalty within the meaning of Article 523 § 1a CCP, or the severity of this penalty not taking into account the mitigating circumstances within the meaning of Article 540 § 1 point 2 (b) CCP, the assessment of these charges fulfilment is made by affecting the decision in this respect and its substantive, re-evaluation. On the other hand, on the basis of the judgment on the cumulative judgment, we do not verify individual judgments by modifying them, but considering the total penalty that the convicted person will bear, we design its final dimension, without interfering *in merito* with judgments that make up the cumulative judgment.

In view of the undoubted lack of a definition of the convicted person, which has already been demonstrated in part, it should be assumed that this is the person to whom the criminal responsibility was assigned in the case when the sentence was imposed, as well as when the criminal court waived its execution [Światłowski 2015, 1358].² It should be noted

² Act of 6 June 1997 – Executive Penal Code, Journal of Laws 2023, item 1860 as amended [hereinafter: EPC].

that on the basis of the EPC a convicted person should be understood as the person against whom enforcement proceedings have been initiated (and are being conducted), while the subject of these proceedings is the enforcement of a decision issued in criminal proceedings, in proceedings for fiscal offences and crimes and in proceedings for offences, and orderly penalties or coercive measures resulting in deprivation of liberty [Postulski 2010, 203]. Without the risk of a greater error, one can assert that their position corresponds to all the elements that constitute the party. The convicted person is entitled to appear in the proceedings personally, or through their representative, has a legal interest in a favourable settlement, since their applications for a cumulative judgment are aimed at obtaining the lowest possible cumulative penalty, and furthermore they are entitled to initiate these proceedings, appear in it and appeal the rulings pending [Kala 2003, 172].

2. Status of social interest representatives

In this context, participation in the cumulative judgment proceedings of social interest representatives should also be considered. The characteristics that distinguish this group of participants are, first of all, representation of social interest in the proceeding. This means that the motive of the action is to protect the general interest, although in specific cases this interest may overlap with the individual interest. Secondly, the social ombudsman should be independent of the parties to the proceedings, not act for the benefit of a particular party to the proceedings even though the actions taken by them may be beneficial to a particular party [Waltoś and Hofmański 2023, 2011].

First of all, consideration should be given to the nature of the prosecutor's participation in the cumulative judgment proceedings. In order to comply with this claim, considerations require the functions that the prosecutor performs in each of the indicated procedural roles, in order to subsequently determine the specific position of the prosecutor in the proceedings on the issue of the cumulative judgment.

The prosecutor, being the body of the preliminary proceedings and subsequently the public prosecutor, performs the procedural function of accusing and in court proceedings the function of prosecution. Due to the

specific nature of the cumulative judgment proceedings, both the accusing and prosecution functions are not implemented. Therefore, it is noted in the literature that the task of the public interest ombudsman is the implementation of the task resulting from the special regulations of standing on the guard of the rule of law [Dudka and Paluszkiewicz 2016, 138]. Referring to the representation of the social interest, it is rightly indicated in the literature of the subject that in this context we should not talk about a separate procedural role, but about the function performed both within the two procedural roles (procedural body and public prosecutor), and separately when the prosecutor performs procedural actions beyond enforcement in the preparatory proceedings and prosecution in the judicial proceedings [Olszewski 2014, 55]. Undoubtedly, the prosecutor in the proceedings on the issue of a cumulative judgment exercises the function of a social interest representative, because the other functions have already been fulfilled in the ordinary proceedings, e.g. even the function of prosecution at the stage after the final sentence. Not without importance is the fact that the legislator in this case uses the concept of prosecutor and not public prosecutor, which further supports the above argument.

The doctrine notes that the prosecutor exercises the powers of the party in the proceedings concerning the issue of a cumulative judgment, whether it be because of his/her right to initiate the proceedings, to participate in them, or to appeal the decisions made in its course [Kala 2003, 244-46]. However, this view is not based on a clear legal basis, which may give rise to controversy at various stages of the proceedings, in particular if it is taken into account that when the legislator decides to grant a certain right to the prosecutor, they specify this in the procedure act, as if they did so on the basis of the law of the party in the course of judicial action in the preliminary proceedings. If, on the other hand, the legislator grants the right to participate in a specific stage to other participants in the proceedings, they explicitly define this right in the provisions of the law, as in the case of the obliged entity or the aggrieved entity, or at least indirectly by combining the norm of Article 425 § 1 CCP *in fine* with a specific provision, e.g. Article 91b CCP.

The second entity performing the functions of social interest representative is the social representative. The question is whether the social representative is entitled to appear in the proceedings on the issue of

a cumulative judgment on the principles discussed earlier concerning the prosecutor. The vast majority of representatives of the doctrine voted in favour of the participation of the social representative in the proceedings on the issue of a cumulative judgment [Daszkiewicz 1976, 147; Kala 2003, 187; Kwiatkowski 1987, 81].³ Nevertheless, since the very beginning of its existence, it has been stressed that they are a participant acting independently of the parties. This means that the actions undertaken by them are submitted in defence of the social interest regardless of which of the parties as a result of their activities may obtain a procedural advantage [Siewierski 1969, 9].⁴

As regards the participation of the social representative in the cumulative judgment proceedings, reference should be made in particular to the latest amendment to Article 90 CCP, which essentially makes the participation of the social representative in the proceedings subject to the consent of at least one of the parties. In the context of the thesis put forward herein that the convict is the sole party in the investigated proceedings and in accordance with the linguistic interpretation of the mentioned provision it might seem that only the consent of the convict is relevant in these proceedings and in the absence of such consent, the court does not allow this representative to participate in the proceedings. The only specific “security valve” for the above procedural arrangement remains the general clause in the form of the interest of justice reserved in the provision, which the court may invoke when the circumstances of the proceedings will indicate the need to allow an additional social interest representative, in this case even contrary to the convicted party position. However, the question arises, is the situation of the convict identical when he or she does not consent to the participation of the representative, and the court will allow the representative of the social organization to appear in the case in the interest of justice in accordance with the position and wish expressed by the prosecutor?

³ S. Kalinowski expressed the opposite opinion indicating that the participation of a social representative is possible only in a jurisdictional proceeding [Kalinowski 1981, 85].

⁴ It should be noted that it is not for the court to control the way participants to the proceedings exercise their rights, even if the social representative reduced their activity to cooperation with the defense attorney of the accused (Judgement of the Appeal Court in Cracow of 29 October 2003, II AKa 175/03, KZS 2004, no. 4, item 43).

The literature expressed the belief that changes in the scope of Article 90 CCP lead to the conclusion that the social representative will play the role of a particular procedural assistant of the party. In support of this statement, the circumstance of eliminating the previous “validity” of the protection of individual interest by him or her, as well as the need to express consent of one of the parties to the proceedings to the participation for the participation of the representative in the criminal proceedings, resulting in the mandatory admission of him or her to participate in the case [Urbaniak-Mastalerz and Niegierewicz 2016, 94]. In other words, as a result of the amendment there has been a redefinition of the status of the social representative from an autonomous entity in relation to the parties of the social interest representative towards the social interest representative, which is somehow a “satellite” of a particular procedural party [Woźniewski 2016, 172].

In these proceedings, the social interest often speaks in favour of the convicted person with a fairly severe cumulative penalty, while, on the other hand, the individual interest of the convicted person will always speak in favour of obtaining the lowest possible penalty [Kala 2001, 247]. So how in practice will the social representative fulfil their role, considering that he or she most often represents the associations of victims of crimes, and less often the organizations to which the protection of the rights of the accused and convicted in criminal proceedings belongs [Grzegorzcyk and Tylman 2014, 373]? Another thing is that the changes introduced in the regulation of the position of the social representative may simultaneously lead to the restriction of his or her participation in the proceedings for the issue of a cumulative judgment, if the consent (provided for in the law) of the party to the proceedings is observed.

3. Status of an auxiliary prosecutor

The question of the status of the auxiliary prosecutor, which in its present form was introduced into the Polish Criminal Proceedings in 1969,⁵ also requires consideration here. Their presence in the trial was intended to extend the principle of contradictory on the one hand, and on the

⁵ Act of 19 April 1969 – Code of Criminal Procedure, Journal of Laws No. 13, item 96.

other to increase the role of the social factor in the criminal proceedings. It is true that the auxiliary prosecutor represents his or her own interest in criminal proceedings, but their active participation can contribute to the discovery of the truth and, in this sense they are also representatives of the social interest [Siewierski, Tylman, and Olszewski 1974, 96]. However, some representatives of the doctrine see in this party to the proceedings, according to the name assigned to this entity, only the role of prosecutor [Dudka and Paluszkiewicz 2016, 101].

In literature it is also indicated that in the enforcement criminal proceedings there is no place for an auxiliary prosecutor, due to the fact that they are excluded from issues concerning punishment, and thus do not take part in the procedure for amnesty, expungement of conviction or suspension of sentence [Siewierski, Tylman, and Olszewski 1974, 97]. This argument in relation to the cumulative judgment proceedings is accepted in theory, although at the same time it underlines that this does not explicitly result from the provisions governing these proceedings [Kmieciak 1977, 78]. D. Kala commented on the inability of the private prosecutor to participate, correctly indicating that the aforementioned entity performs only the function of accusing and prosecution, which in turn was implemented in the main proceedings. As further stated, the proceedings on the issue of a cumulative judgment are carried out in the public interest, while the imposition of a cumulative sentence is in the interest of the state [Kala 2001, 238; Kwiatkowski 1987, 79-81].

In the context of the list of entities entitled to apply for the initiation of a cumulative judgment proceedings, S. Steinborn voted in favour of the convicted person and their defence, the statutory representative, as well as the prosecutor. In the opinion of the author, this is supported by the fact of the benefits for the convicted person in the substance of the cumulative judgment, which consequently convinces to exclude the person of the auxiliary prosecutor in these proceedings [Steinborn 2015]. While the presented thesis could be defended under the rules of jurisprudence, according to which the issuing of a cumulative judgment takes place solely in the interest of the convicted person, the current direction of jurisprudence does not exclude the opposite situation when a cumulative judgment is less favourable for the overall situation of the defendant in the enforcement proceedings. The analysed thesis therefore seems difficult to defend. However,

this does not preclude the possibility of applying for the initiation of proceedings by the prosecutor and the possibility of his/her participation in these proceedings.

It appears that the argument determining the possibility of allowing an auxiliary prosecutor to proceed in the case of a cumulative judgment should be the function that this entity will perform in that proceedings. If he or she was to carry out the function of prosecution, it is essentially necessary to oppose their participation in these proceedings, as it was undoubtedly carried out in the ordinary proceedings. The question is whether the auxiliary prosecutor may exercise the function of a representative of the social interest in this case. This issue is even more updated after the amendment of Article 90 CCP, because if at present the social representative loses their autonomous position in relation to the other participants of the proceedings in the issue of issuing a cumulative judgment and is perceived as a “satellite” of one of them, then the question arises what difference will be between their participation and the presence of the auxiliary prosecutor? If the prosecutor performs the function of a social ombudsman, then finally another question arises: is it necessary to cumulate different entities performing the same procedural function? It also seems that due to the frequency of social representative institutions, the current cumulation of these entities does not pose many practical problems.

4. Private prosecutor status

On the other hand, the possibility of participating in the cumulative judgment proceedings by a private prosecutor was completely rejected, even when the convict is being prosecuted for cumulative judgment proceedings, in which one final judgment was made in public complaint proceedings and the other in private complaint proceedings [Kwiatkowski 1987, 80; Kala 2001, 238].⁶ In this regard, the arguments raised against the participation of the auxiliary prosecutor in these proceedings appear to be partially relevant. The considerations concerning the possibility of initiating a cumulative judgment proceeding by the aggrieved party and the civil plaintiff remain unfounded. As regards the aggrieved party, it should be

⁶ W. Daszkiewicz took the opposite position [Daszkiewicz 1976, 259].

noted that he or she is a party to the preliminary proceedings and that they may appear before the court of first instance in court proceedings only after they have made a statement of acting as an auxiliary prosecutor. As of 1 July 2015, the provisions regarding civil plaintiffs also ceased to apply, leaving no additional thread for consideration in this area.

Summary

Considerations relating to the cumulative judgment proceedings revealed the problem of the status of the parties identified in Article 570 CCP as entitled to initiate these proceedings. It appears that despite the doubts raised related to the content of the CCP, the party of these proceedings is convicted person. However, it should be noted that if the legislator has decided to use the concept of the convict on the basis of follow-up proceedings, it seems at least desirable to expect that the most important participant in this part of the criminal proceedings does not remain in uncertainty as to the rights and obligations currently bound by him or her, regardless of the fact that the proceedings have been legitimized. For this reason, it is necessary to demand that the convicted person's status be clearly defined in the provisions of chapter 60 CCP.

The prosecutor's status is no longer so obvious in these proceedings. The thesis that the prosecutor is not a party or even an entity acting on the rights of the party seems to be valid. Such a normative state raises questions about the scope of the powers of the prosecutor in these proceedings. It is *de lege ferenda* to propose normative regulation of the status of entities entitled to initiate these proceedings, proposing the following modification of the provisions of the CCP. Article 570 CCP should be replaced by the following: Article 570 § 1. The cumulative judgment is delivered by the court judgment *ex officio*. § 2. A convicted person may apply for the initiation of proceedings before a court and participate in them as a party. If the prosecutor finds that the conditions for a cumulative judgment are met, they immediately submit an application for the initiation of proceedings before the court and may take part on the rights of the party.

The proposed wording of § 3 above is due to the belief that the prosecutor standing on the guard of the rule of law should be obliged on an

equal footing with the court to take actions aimed at fulfilling the duties arising out of material criminal law.

The proposed modification is reinforced by two further arguments. The first is the normative regulation of Article 12b EPC establishing the obligation of the enforcing authorities to notify the court of the existence of conditions for issuing a cumulative judgment, if the authority executing the decision in its scope of action will provide such information. It appears that if enforcement authorities which are not parties to the cumulative judgment proceedings have an obligation to notify the court of the need to comply with the provisions of material criminal law, the authority having the rights of the party should be obliged, and not merely empowered, to initiate such proceedings. It should therefore be noted that the prosecutors are not active in this regard. Secondly, the proposed solution was already known in the interwar period, where the application to § 124 of the Decree of the Minister of Justice of 20 July 1935 – Regulations of office of prosecutors of appeals and district courts⁷ ruled that the prosecutor was obliged to apply for a cumulative judgment in cases where the conditions for a cumulative judgment were met. The historical interpretation also speaks in favour of this solution.

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⁷ Journal of Laws No. 55, item 357.

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