LEGAL NATURE OF THE TIME LIMIT FOR VERIFICATION ACTIVITIES (ARTICLE 307 § 1 CRIMINAL PROCEDURE CODE)

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The issue of verification activities as stipulated in Article 307 of the Criminal Procedure Code (CPC) is strictly connected with grounds for instigating preparatory proceedings as well as the sense and purposefulness of instituting criminal proceedings in general. Thus, this paper deals with a very important matter from the point of view of social interest, reflected in the prosecution of criminals and combating crime, as well as from the point of view of individual interest concerning the protection people potentially (hypothetically) involved in a given offence. The reasoning focuses on the question of a time limit for verification activities, and it aims at determining its legal nature. The issue is approached in different ways in the legal literature and has not become out-of-date, just the opposite. The lack of unanimity on the matter is not conducive to creating a state of legal certainty, even if the practice seems to adopt one of the proposed solutions. Apart from that, one can have an impression that contemporary challenges encountered in criminal proceedings, inter alia, as a result of social trends, inspire searching for a new approach to the issue in question.

The title of the paper directly indicates that the subject matter is the verification activities in the classical version, which immediately brings to mind the legal institution laid down in Article 307 CPC. Other instances of verifying information within criminal proceedings are not covered in the paper.[1]

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[1] For more on the issue, see e.g. B. Janusz, *Czynności sprawdzające prowadzone w stosunku do osoby podejrzewanej chronionej immunitetem w polskim procesie karnym*, Ruch Prawniczy, Ekonomiczny i Socjologiczny 4, 2005, p. 200; K. Chałubek, *Specyfika czynności sprawdzających*, Prokuratura i Prawo 9, 2012, p. 120 et seq.

It is almost commonly and rightly assumed that verification activities under Article 307 CPC are not a part (stage, phase, or form) of preparatory proceedings, *ergo* they are not procedural in nature because they are undertaken before proceedings are instigated in order to establish grounds for or admissibility of the proceedings, i.e. in order to avoid hasty or groundless instigation of the proceedings and to eliminate groundless decisions to refuse to instigate the proceedings, which infringes the principle of legalism.[2] Thus, it might seem that while verification activities precede the initiation of criminal proceedings, the CPC provisions regulating time limits are not applicable to them and, as a result, there is no sense in considering the legal nature of the time limit for those activities based on criminal procedure rules. If such activities do not constitute an integral part of the proceedings, why should we apply to them general rules concerning time limits for carrying out procedural activities laid down in Chapter 14 CPC? As it is rightly noticed in literature, although those activities are not in fact part of preparatory proceedings, they are conducted based on the Criminal Procedure Code; however, not every activity prescribed in the CPC must be procedural in nature.[3] Apart from that, as it is indicated in Article 307 §§ 2 and 3 CPC, a verification activity does not consist in collecting evidence in the form of an expert witness's opinions or acts that require writing reports, i.e. activities that are clearly based on evidence collection rules. However, it is admissible to develop a record of the receipt of oral notification of an offence or a motion to prosecute and to interview the person reporting an offence as a witness. This means that the legislator makes an exception and grants concession to conduct proceedings to check the possibility of carrying out particular activities typical of the criminal proceedings. Still, if they are performed within a verification procedure, they must take into account all criminal procedure requirements, i.e. those reserved for procedural activities. Thus, it is fully justified to conduct analyses based on and taking into account the provisions and rules stipulated in the Criminal Procedure Code.

Explaining the basics of the discussed issue, it is necessary to establish one thing. The analysis of the nature of the time limit for verification activities concerns only a situation in which the report of an offence commission is their source. A situation in which law enforcement bodies verify their own information leading to a presumption that an offence has been committed before the decision on instigating an inquiry or investigation is inadmissible (Article 307 § 5 CPC). It is hard to deny that the time limit for verification activities determined in Article 307 § 1 CPC is not

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[2] For instance, J. Tylman, *Instytucja czynności sprawdzających w postępowaniu karnym*, Łódź 1984, pp. 24, 27, 65; *idem*, *Postępowanie przygotowawcze w procesie karnym*, Warszawa 1998, p. 37; R. Kmiecik, *Postępowanie sprawdzające a czynności sprawdzenia „własnych informacji"*, Prokuratura i Prawo 10, 2005, p. 44; F. Prusak, *Pociągnięcie podejrzanego do odpowiedzialności w procesie karnym*, Warszawa 1973, pp. 149, 152–153; S. Stachowiak, *Wszczęcie postępowania przygotowawczego a czynności sprawdzające*, Prokuratura i Prawo 9, 1999, pp. 7, 9; *idem*, *Źródła informacji o popełnionym przestępstwie w polskim postępowaniu karnym*, Prokuratura i Prawo 2, 2005, p. 36; B. Janusz, *supra* n. 1, p. 199; P. Tomaszewski, *Funkcjonowanie czynności sprawdzających*, Wojskowy Przegląd Prawniczy 2, 1983, p. 114; J. Łupiński, *Odmowa wszczęcia postępowania przygotowawczego*, Prokuratura i Prawo 5, 2007, p. 126; A. Choromańska, M. Porwisz, *Zasada legalizmu a reakcja Policji na popełnione przestępstwo*, [in:] B. Dudzik, J. Kosowski, I. Nowikowski (eds), *Zasada legalizmu w procesie karnym*, Vol. 1, Lublin 2015, p. 120.

[3] J. Tylman, *Instytucja*, *supra* n. 2, p. 26.

applicable because § 5 of the provision has reference to § 2 and omits the regulation under § 1. This is also what is emphasised in literature with special attention paid to the lack of statutory time limits for those activities, in fact, in the case of verifying 'own information'.[4]

What has already been stated suggests that statutory indication of a time limit for verification activities is inherently connected with the essence of the situation concerned. Indeed, reporting an offence, as a form of society's cooperation with law enforcement bodies, which has features of notification of an offence commission,[5] makes it possible not only to start verification activities in the event data provided in the notification are not sufficient to instigate proceedings. Moreover, it must imply the possibility of performing those activities only in a precisely determined period. It is so because the above-mentioned notification obliges a law enforcement body to deal with the provided information. The time limit assigned to a law enforcement body for verification is an important issue. The activities can, although do not have to, constitute a characteristic forecast of launching future criminal machinery for limiting citizens' rights. In addition, the activities discussed are in the interest of justice administration so that unnecessary proceedings are not instigated and the waste of time and cost can be avoided as well as unnecessary resources are not involved. The legal doctrine rightly approaches those relationships by indicating that, on the one hand, there is an advantage in the form of protecting a citizen's interest against groundless or premature instigation of criminal proceedings and, on the other hand, this protects public interest in combating crime.[6] The indicated guarantees, because of their nature, should be implemented in the shortest possible period but, at the same time, one that takes into account the possibilities of the practice. In other words, it should be a time limit guaranteeing that it will not constitute harm to the social interest or the state of uncertainty or damage to the interest of an individual (a person suspected of committing an offence or the hypothetically aggrieved). It concerns the necessity of taking a decision on the instigation of preparatory proceedings as soon as there is a justified suspicion that an offence has been committed (Article 303 CPC), which is very important from the point of view of the future collection and protection of evidence and ensuring appropriate (among

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[4] See, e.g. R.A. Stefański, [in:] Z. Gostyński (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. II, Warszawa 1998, p. 53; J. Grajewski, [in:] J. Grajewski, L.K. Paprzycki, M. Płachta, *Kodeks postępowania karnego*, Vol. I: *Komentarz do art. 1–424*, Kraków 2003, p. 732; S. Stachowiak, *Wszczęcie*, *supra* n. 2, p. 10; B. Janusz, *supra* n. 1, p. 199; B. Szyprowski, *Postępowanie sprawdzające w procesie karnym*, Prokuratura i Prawo 7–8, 2007, p. 168; J. Łupiński, *Czas trwania postępowania sprawdzającego*, Prokuratura i Prawo 10, 2011, pp. 99–100; K.T. Boratyńska, P. Czarnecki, [in:] A. Sakowicz (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2018, p. 792.

[5] J. Karaźniewicz, *Zawiadomienie o przestępstwie jako forma inicjowania postępowania karnego – zagadnienia wybrane*, [in:] R. Olszewski (ed.), *Artes serviunt vitae sapientia imperat. Proces karny sensu largo. Rzeczywistość i wyzwania. Księga jubileuszowa Profesora Tomasza Grzegorczyka z okazji 70. urodzin*, Warszawa–Łódź 2019, p. 264; S. Cora, *Podstawy społecznego obowiązku zawiadomienia o przestępstwie. Problematyka art. 304 § 1 k.p.k., art. 113 § 1 k.k.s. i art. 4 § 1 i 2 u.p.n.*, [in:] W. Cieślak, S. Steinborn (eds), *Profesor Marian Cieślak – osoba, dzieło, kontynuacje*, Warszawa 2013, p. 681.

[6] F. Prusak, *Postępowanie sprawdzające w nowym k.p.k.*, Problemy Praworządności 2, 1971, p. 28; Z. Młynarczyk, *Czynności sprawdzające i odmowa wszczęcia postępowania karnego*, Prokuratura i Prawo 5, 1995, p. 108.

others, fast) penal response. It is necessary to protect persons against groundless instigation of proceedings because this causes unjustified painfulness to a person prosecuted[7] (especially in their environment, but not only) just because of the fact that they are subject to the proceedings. On the other hand, the person reporting an offence must be quickly informed about the results of the verification conducted by a law enforcement body, which is extremely significant for the aggrieved.

The above arguments are of fundamental importance for the discussed issue. Determination of the legal nature of the time limit for verification activities is, in fact, an indication of a real time within which those activities can be carried out. However, depending on whether the same term is strict or more flexible in nature, the period assigned for checking activities can actually be different, which is not always advantageous for a social or individual interest.

In accordance with Article 307 § 1 CPC, verification activities should be conducted within 30 days of the date when an offence has been reported because in this period it is necessary to issue a decision on instigation of or refusal to instigate an inquiry or investigation. What clearly confirms the fact that one of those decisions must be taken before the period ends is the content of the provision quoted, where the issue of the decision is directly connected with checking data included in the report on an offence: 'In this case [in the case of verification activities – R.K.], the decision on instigation of an investigation or on refusal to instigate it should be issued at the latest within the time limit […].' Thus, the period of 30 days is strictly and exclusively connected with the need to conduct verification activities,[8] and the instigation or the refusal to instigate are the forms of its conclusion.

Such an understanding of the discussed time limit makes it possible to state that it is obviously statutory in nature, strictly determined by a provision, binds a law enforcement body and is maximal, i.e. verification activities should be carried out before it ends at the latest. The listed features of the time limit for performing those activities are essential for an attempt to decode its legal nature. First of all, it is evident that solving the problem must be contained within the limits of categorization covering statutory time limits. It is necessary to share the opinion of the doctrine that statutory time limits are classified in two groups: definite and indefinite (instructive, regulatory) ones; where the definite time limits include a statute of repose, final deadlines and other (remaining) definite time limits.[9] The phrase 'at the latest' used in Article 307 § 1 CPC should be interpreted as follows: the deadline for verification activities should not be missed, thus a law enforcement body should issue a decision on instituting or refusing to institute preparatory proceedings before 30 days pass since the day when an offence has been reported. In this context, there are no doubts that verification activities should take as little time as possible and the period should be adjusted to the real circumstances, the require-

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[7] J. Tylman, *Istota i formy wszczęcia postępowania karnego w sprawach publicznoskargowych*, Acta Universitatis Lodziensis. Folia Iuridica 22, 1985, p. 32.

[8] J. Tylman, *Instytucja*, *supra* n. 2, p. 186; Z. Szatkowski, *Czynności sprawdzające w ujęciu kodeksu postępowania karnego*, Problemy Kryminalistyki 84, 1970, p. 187.

[9] For instance, K. Marszał, *Proces karny. Zagadnienia ogólne*, Katowice 2013, pp. 297–298. Compare I. Nowikowski, *Terminy w kodeksie postępowania karnego*, Lublin 1988, pp. 17–25.

ments of a particular case, and the type of doubts that must be resolved.[10] However, these statements can turn out to be insufficient to determine the legal nature of the said time limit. It is rightly indicated in literature that the basic criterion making it possible to determine the legal nature of a given time limit consists in the legal consequences of its expiry.[11]

Four basic approaches to the legal nature of the analysed time limit can be found in literature, but particular authors also have different views on the way of interpreting the consequences of failing to meet the 30-day time limit.

The first opinion is based on the thesis that the deadline for conducting verification activities is instructive in nature. However, the supporters of this view are not unanimous in interpreting the consequences of failing to meet the 30-day time limit. Some of them argue that activities after the deadline are still effective, including the decision on instigating or refusing to instigate proceedings. Still, in accordance with the essence of an instructive time limit, there may only be disciplinary consequences for the law enforcement employees.[12] Other authors take a stance that failing to meet the deadline results in making a law enforcement body obliged to issue a decision on instituting an enquiry or investigation (in case the commission of an offence is not confirmed in the course of the proceedings, it should be discontinued). However, one cannot refuse to instigate proceedings because, under Article 307 § 1 CPC, this decision can be issued by the 30th day of the receipt of notification of an offence commission at the latest.[13] There is also an opinion, according to which when failure to meet the deadline results from an objective obstacle (e.g. ordering inspection and waiting for its findings), a decision on refusing to instigate an investigation should be issued without delay, which does not mean that a decision on instituting proceedings cannot be taken later.[14]

According to the second stance, when the verification procedure does not resolve doubts within 30 days, preparatory proceedings should be instigated. However, the legal nature of the deadline is not determined[15] and one can only assume that in such a situation it should be treated as a maximal one.

The supporters of the third stance emphasise that the 30-day time limit is not instructive in nature. They do not directly indicate the type of the time limit and

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[10] J. Tylman, *Postępowanie*, *supra* n. 2, pp. 38–39; B. Szyprowski, *supra* n. 4, p. 169.

[11] I. Nowikowski, *Terminy*, *supra* n. 9, p. 16.

[12] J. Tylman, [in:] R.A. Stefański (ed.), *System Prawa Karnego Procesowego*, Vol. X: *Postępowanie przygotowawcze*, Warszawa 2016, p. 234; T. Grzegorczyk, *Kodeks postępowania karnego. Komentarze Zakamycza wraz z komentarzem do ustawy o świadku koronnym*, Kraków 2003, p. 778; M. Kurowski, [in:] D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Vol. 1: *Art. 1–424*, Warszawa 2018, p. 1158; M.R. Jasińska, *Źródła informacji o popełnionym przestępstwie*, Szczecin 2016, pp. 238–239.

[13] B. Szyprowski, *supra* n. 4, pp. 171, 180. However, the author did not avoid a certain contradiction in his reasoning because he also argued that as a result of missing the discussed time limit, it is necessary to immediately take a decision on instigation of or refusal to instigate proceedings, although he sees a condition to admissibility of the latter option and says the activities that have not been performed cannot be significant for the assessment of the possible occurrence of an offence; see p. 169.

[14] Z. Brodzisz, [in:] J. Skorupka (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2020, p. 786.

[15] J. Grajewski, [in:] J. Grajewski, L.K. Paprzycki, M. Płachta, *supra* n. 4, p. 731.

just mention that it is based on the guarantee-related interest of justice administration. They highlight that: (1) failure to conclude the verification procedure within the time limit implies the necessity of issuing a decision on refusing to instigate proceedings because it is inadmissible to extend the time limit, even under the prosecutor's supervision; (2) when proceedings are not instituted within this time limit, it means a refusal to prosecute because desisting from issuing a decision on instituting proceedings in the statutory time limit is *ex lege* tantamount to a refusal to institute them.[16]

Finally, it is necessary to mention the fourth opinion, according to which the time limit is one of the definite deadlines for procedural bodies. Two strongly opposite opinions on the legal consequences of failure to meet the deadline can be noticed here. When justifying the above claim, it is emphasised that activities performed with the infringement of the time limit are effective (although it is a maximal one); however, formal defectiveness occurs and it results in a procedural consequence in the case the deadline is not met; it is a complaint about a law enforcement body's inaction (Article 306 § 3 CPC).[17] In order to explain it precisely, it is also indicated that a direct legal consequence cannot be assumed the moment the deadline expires because the principle of factual truth must prevail over the principle of speed. As a result, it is necessary to assume relativism depending on the nature of doubts that must be resolved or the complexity of a given case, which means that necessary activities can be performed after the 30-day time limit if they are inevitable for taking appropriate decisions concerning proceedings.[18] On the other hand, it is emphasised that it is a maximal time limit, which cannot be extended in any case and if it occurs, regardless of the possibility of filing a complaint about inaction, it is necessary to issue a decision on refusing to instigate an inquiry or investigation (which does not constitute an obstacle to institute proceedings in the same case later on based on the material obtained in the later period).[19]

As it is seen, a complex mix of different, often contradictory opinions can be found with reference to the discussed issue. Before their analysis is conducted, a final deadline should be excluded from consideration. The time limit for verification activities is not applicable to appellate measures and, what is more important, the statute does not recognise it as a final one (Article 122 CPC) and it is hard to notice a consequence of inaction, which is the third criterion for the recognition of a final deadline.

Thus, it should be taken into account that the analysis of the Criminal Procedure Code provisions does not lead to the selection and indication of clear consequences of failing to meet the deadline reserved for verification activities.

The possibility of filing a complaint about inaction referred to in Article 306 § 3 CPC, which some authors mention, does not necessarily play such a role. There

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[16] F. Prusak, *Postępowanie*, *supra* n. 6, p. 43; *idem*, *Pociągnięcie*, *supra* n. 2, pp. 160–161. This stance is in general supported by B. Janusz, *supra* n. 1, p. 198.

[17] I. Nowikowski, *Terminy*, *supra* n. 9, p. 70; J. Łupiński, *Czas*, *supra* n. 4, pp. 105–107.

[18] It was highlighted that inviolability of the maximum 30-day time limit should be a rule, unless it is in conflict with the aim of verification activities in the form of further activities of this type; see J. Łupiński, *Czas*, *supra* n. 4, pp. 108–110.

[19] R.A. Stefański, [in:] Z. Gostyński (ed.), *Kodeks*, *supra* n. 4, p. 53.

were obvious reasons for granting a person or an institution that reports an offence the right to file a complaint to a superior prosecutor or one appointed to supervise a body that has been notified in case they are not informed about the instigation of or refusal to instigate preparatory proceedings within six weeks.[20] It was aimed at decreeing a guarantee for the principle of legalism and the principle of speed, stimulating law enforcement bodies to deal with reports on offences efficiently, which is of considerable importance from the point of view of an entity reporting an offence, in particular the aggrieved.[21] The time limit of six weeks undoubtedly reflects the relationship with the time limit for verification activities. This means that it is necessary to issue a decision on instigation of or refusal to instigate proceedings within 30 days of the date of notification of an offence and the remaining two weeks must be assigned for notifying a party concerned about the issued decision (in the case of the refusal to instigate proceedings, a notification must be served on the party).

However, it does not seem that the above-mentioned complaint only applies to the situation in which verification activities have been carried out. It is true that the deadline for filing a complaint is adjusted to the time limit for verification activities but the regulation of Article 306 § 3 CPC can be applicable also when a law enforcement body has not undertaken the steps because of its extraordinary sluggishness in taking a decision concerning grounds for or admissibility of instigating proceedings, and thus inaction when informing an entity reporting an offence about the case results. The Criminal Procedure Code does not differentiate between complaints about inaction of a law enforcement body depending on whether verification activities have been performed or not and, as a result, the deadline for filing a complaint is determined in a general way in relation to both situations.[22] The obligation to issue a decision on instigation of or refusal to instigate proceedings without delay after an offence is reported, which is stipulated in Article 305 § 1 CPC, does not change anything in this matter. When a law enforcement body fails to act within the period of six weeks of the date when an offence has been reported, then a complaint filed in the mode laid down in Article 306 § 3 CPC can constitute the source of information about the omission of that body for a superior prosecutor or the one appointed to supervise it. Attention should be drawn, however, to one circumstance that indicates that a complaint about inaction does not only apply to the extension of the time limit for conducting verification activities. The possibility of filing this complaint is regulated in Article 306 CPC: the provision regulating the mode of filing a complaint about the decision on refusal to instigate an investigation

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[20] For more on the issue of this complaint, see e.g. K. Dudka, *Zażalenie na bezczynność organu procesowego – uwagi de lege ferenda*, Prokuratura i Prawo 12, 2006, pp. 144–149.

[21] It should be assumed that the phrase 'a person or an institution that reported an offence' used in Article 306 § 3 CPC is so broad that it includes the aggrieved within its scope. Although the content of Article 305 § 4, Article 306 §§ 1 and 1a CPC might incline one to a different conclusion, such interpretation would be anti-guarantee. The author who was for referring the regulation under Article 306 § 3 CPC to the aggrieved is e.g. K. Dudka, *supra* n. 20, p. 144, and the one who was against is e.g. R.A. Stefański, [in:] R.A. Stefański (ed.), *System Prawa Karnego Procesowego*, Vol. X: *Postępowanie przygotowawcze*, Warszawa 2016, pp. 720–721.

[22] R.A. Stefański, *Zażalenie na bezczynność w zakresie rozpoznania zawiadomienia o przestępstwie*, Prokuratura i Prawo 6, 2014, p. 11.

and under Articles 303 and 305 CPC concerning mainly instigation of proceedings. It is not regulated in Article 307 CPC concerning verification activities. Thus, the systemic interpretation indicates that the result determined in Article 306 § 3 CPC is not autonomous in nature in relation to these proceedings. On the other hand, there can be doubts whether it is a consequence at all or rather a right to control a law enforcement body.[23]

Moreover, it does not seem that the expiry of the 30-day time limit under Article 307 § 1 CPC was to result in obligatory instigation of proceedings. The content of the provision referred to does not allow making an assumption of automatic response in the matter. In order to be able to instigate an inquiry or investigation, it is necessary to recognise the existence of grounds consisting in a justified suspicion that an offence has been committed and, in addition, the lack of negative procedural conditions excluding admissibility of proceedings. The repressive nature of criminal proceedings is also an argument against the assumption of such automatism. As it has been emphasised earlier, instigation of an inquiry or investigation results in far-reaching legal consequences, especially if it is premature, for human rights and freedoms. As a result, failure to conclude verification activities in the statutory time limit cannot justify the issue of a decision on instigating proceedings only for this reason.[24] It might mean raising an unnecessary suspicion of a given person's involvement and lead to negative consequences resulting from law enforcement bodies' interest in them, not to speak about unnecessary costs, i.e. disadvantages for justice administration within its broad meaning.[25] Moreover, what sounds rational is a practical argument for purposelessness of instigating proceedings in a situation when a few days exceeding the 30-day time limit may be enough to perform activities making it possible to find out that there are no grounds for the instigation of an inquiry or investigation.[26] Abandoning the anticipation of other considerations, it is necessary to state that the way in which the legal nature of the discussed time limit is approached should, at least to a minimal extent, take into account practical aspects of the subject matter.

The opinion that it is inadmissible to refuse to instigate proceedings after the 30-day time limit of the date when an offence has been reported, while it is possible to instigate proceedings in case the deadline expires does not deserve approval, either. This differentiation is unjustified in the light of Article 307 § 1 CPC, where no differentiation like this is stipulated. Apart from that, issuing a decision without delay that constitutes a form of response to the report on an offence, which is referred to in Article 305 § 1 CPC, does not in fact apply only to the instigation of proceedings but also to the refusal to instigate them, thus it is hard to find an argument for the contested stance in this regulation.

It is also necessary to express criticism of the opinion assuming the implied nature of the refusal to prosecute in case proceedings are not instigated within the time limit for verification activities. The assumption of the refusal to prosecute

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[23] Compare R.A. Stefański, [in:] R.A. Stefański (ed.), *System*, *supra* n. 21, p. 716.
[24] Z. Brodzisz, [in:] J. Skorupka (ed.), *supra* n. 14, p. 786.
[25] M.R. Jasińska, *supra* n. 12, p. 239.
[26] *Ibid*.

occurring *ex lege*, i.e. without the issue of a decision, is in fact anti-guarantee-like because it deprives the aggrieved or another entitled entity of the possibility of appealing with the use of a complaint about such a decision.[27]

It should be admitted that the opinion that it is necessary to issue a decision on the refusal to instigate an inquiry or investigation causes quite positive reactions. It seems to be a natural consequence of non-conclusion of the verification procedure within the period of 30 days. Since a law enforcement body has not been able to sufficiently establish with the use of verification activities whether there are grounds for instigating preparatory proceedings, prosecution should be refused in order to avoid exposing particular persons to negative consequences of instigating criminal proceedings against them (also in a real form), the state treasury to unnecessary costs, and those bodies' employees to mobilisation of unnecessary resources. However, there are practical reasons, mentioned above, that are in opposition to this assumption because one cannot lose sight of the principle of truth, influencing also verification activities at the pre-trial stage.

In this context, the concept of conducting verification activities after the 30-day time limit in each case when it is required by the necessity of achieving the aims of criminal proceedings arouses opposition. The problem is that such unclear formulations that allow ignoring the indicated time limit can constitute an impulse to arbitrary actions considerably exceeding the period of 30 days, which can even result in extreme cases in performing verification activities for a period longer than six weeks under Article 306 § 3 CPC. It would be a considerable infringement of the obligation laid down in Article 307 § 1 CPC, which is contained in the phrase 'at the latest'.

Coming to the last part of the discussion in order to resolve the discussed issue, first of all, it is necessary to emphasise that there are no reasons justifying the recognition of the time limit under Article 307 § 1 CPC as another definite deadline. Indeed, the authors opting for this solution use the phrase 'definite deadline for procedural bodies'; however, they adopt a construction that to a great extent corresponds to the concept of the other definite deadlines. These are deadlines that, if they are not met, do not result in ineffectiveness of actions, but other procedural consequences determined by a provision of procedural law are possible. In order to provide examples, one can indicate: (1) the time limit for a break in a trial; failing to meet the deadline results in the recognition of a trial as adjourned (Article 401 § 2 in conjunction with Article 402 § 3 CPC); (2) the deadline for announcing the sentence; failing to meet it results in the necessity of conducting a trial again from the beginning (Article 411 §§ 1 and 2 CPC); (3) the time limit between serving a writ of summons and the date of a trial; failure to meet the time limit results in adjourning a trial on the request of the accused or the counsel (Article 353 §§ 1 and 2 CPC). The comparison of the above situations with the situations regulated in Article 307 § 1 and Article 306 § 3 CPC shows that these are two different groups of cases. Apart from the fact that the consequence regulated in Article 306 § 3 CPC is not autonomous when the time limit for verification activities is not met, which has been highlighted earlier and which constitutes a clear difference in relation to

[27] I. Nowikowski, *Terminy*, *supra* n. 9, p. 69.

the examples of other definite deadlines indicated (particular consequences of failing to meet those deadlines are only typical of situations that they apply to), there is one more important circumstance. Namely, the provisions under Article 401 § 2 in conjunction with Article 411 §§ 1 and 2 and Article 353 §§ 1 and 2 CPC apply the same method of indicating the consequences of missing the time limits. While regulating a given time limit or in connection with this regulation, the consequence of missing it was directly indicated ('in case of missing', 'in case of exceeding'). This way, this consequence is directly connected with the time limit it refers to. Meanwhile, the construction of the solution resulting from Article 306 § 3 CPC proves that its relation with exceeding the time limit for verification activities is indirect at the most. Thus, the sum of all the mentioned arguments is for the refusal of classifying the time limit under Article 307 § 1 CPC as one of the other definite time limits.

Therefore, there are still two options to be discussed: a statute of repose and an instructive deadline.

The categorical nature of the time limit for verification activities resulting from the use of the phrase 'at the latest' supports the first possibility, that means an activity is ineffective when the deadline expires (an activity is inadmissible). One cannot ignore the fact because it would mean a negation of something that cannot be negated. One may have an impression that the legislator's intention was to make the time limit maximal so that it is not missed. There is a question, however, if the meaning of this linguistic phrase is literal in this context.

It is worth emphasising that regulating a statute of repose in the Criminal Procedure Code, the legislator in general uses phrases strongly and clearly stressing the prohibition of exceeding a given time limit (e.g. 'It is inadmissible […]' – Article 524 § 3 CPC, 'After a year's time, […] can overrule or alter the decision or its justification only in favour of the suspect'). However, as it turns out, it is not always so because the nature of a time limit can depend on its normative context. The regulation under Article 237 § 2, second sentence, CPC can be an example of a situation in which a court has five days to issue a decision of approval of a prosecutor's ruling to apply telephone tapping in an urgent case. It might seem that it is an instructive time limit. However, the fact that lack of approval implies the necessity of destroying all recordings and it concerns recognition whether tapping, as a painful interference into the sphere of citizens' freedoms, is legal at all (without a court's decision approving the use of this measure, it is only conditionally legal) may justify the assumption that we deal with a statute of repose concerning a very important guarantee-related issue.[28] However, such an interpretation may be recognised as controversial because the statutory regulation is not unambiguous.

Similar thoughts come to mind in relation with the time limit for verification activities. Serious guarantee-related reasons can justify the treatment of this time limit as a statute of repose. On the other hand, the practical reasons and the fact that it is a time limit addressed to a procedural body can constitute arguments for attributing the features of instruction to it.

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[28] Compare similar arguments in J. Skorupka, *Krytycznie o stanowisku Sądu Najwyższego w kwestii legalności kontroli rozmów telefonicznych*, Prokuratura i Prawo 4, 2011, pp. 16–17.

The term 'instructive time limit' covers different deadlines, missing which does not result in any negative consequences in the procedural sphere; however, failure to meet them can potentially carry disciplinary sanctions. Many time limits assigned to a body conducting criminal proceedings to perform a procedural action are instructive time limits. It should be noticed that the legislator uses different words to specify them. In the case of the time limit for developing an indictment or taking another decision concluding preparatory proceedings, the legislator uses the verbs: 'develops', 'approves', 'issues', i.e. forms that are not categorical in nature (Article 331 § 1 CPC). On the other hand, in the case of regulating the issue of adjourning the development of the justification of a decision, a phrase 'can […] for a period of seven days' is used (Article 98 § 2 CPC). A higher level of rigorous approach is noticed in relation to the time limit assigned to the development of the justification of a sentence ('The justification of a sentence should be developed within the period of 14 days […]', but this rigour is softened by the possibility of extending this time limit for a period determined by the president of a court (Article 423 § 1 CPC)).

However, the examples of presented instructive time limits differ from the time limit for verification activities because the provisions regulating them do not use phrases assigning categorical nature to them or the context of the regulation does not indicate that there is no possibility of performing an activity in a later period. At the same time, the time limit prescribed in Article 307 § 1 CPC seems to be final in the sense that the 30-day period should be evidently treated as maximal. On the other hand, the phrase 'at the latest' can be certainly interpreted through the prism of law enforcement bodies mobilisation to perform their activities faster because disciplinary sanctions are designed as a guarantee of meeting the deadline. It is evident that in the light of the presented examples of a statute of repose, in the case discussed under Article 307 § 1 CPC, the level of categorical and final nature is lower.

How can this dilemma be resolved then? Probably, an instructive time limit is regulated in the quoted provision. This conclusion, however, has a minimal edge over the opinion that it has the features of a statute of repose.

One can have doubts whether assigning this time limit the features of a statute of repose would not be a too far-reaching solution in the sense that the possibility of conducting verification activities would be totally blocked in case all potential doubts were not explained within the 30-day period. The above-mentioned example presented by one of the authors that concerns a few days needed to resolve the issue of grounds for or admissibility of the instigation of proceedings is quite distinct in this area. One can consider the extension of the time limit to 40 days and giving it the features of a statute of repose. In such a situation, however, there is a fear that it can sometimes lead to demobilisation of a law enforcement body because the time for performing verification activities is relatively long. In other words, activities that can be performed in 20 days can take 40 days.

One can also consider a solution assuming the instructive nature of the time limit discussed but with a possibility of extending it by ten days in particularly justified cases when the necessity of explaining the circumstances of the case requires that. In order to avoid too frequent and unjustified extension of the verification procedure, the admissibility of this extension should be limited by the application of precise

and definite linguistic phrases and by listing the situations in which it is possible (e.g. waiting for the findings of an inspection, inability to interview a person who has reported an offence due to objective obstacles, etc.). However, if the time limit remained instructive, then the rule that an activity performed after the deadline would be effective should remain applicable and it could happen that verification activities would continue after 40 days. Apart from that, the adoption of a statutory possibility of extending the verification procedure would have to be connected with other than the present regulation of a prosecutor's supervision of proceedings.

An optimal solution would be to assign the status of another definite time limit to the time limit under discussion but in the number of 35 or 40 days, with a clear reservation that in case of missing it and failure to conclude verification activities within this time frame, the instigation of an inquiry or investigation should be refused. The awareness that in case of failure to establish grounds for instigating preparatory proceedings and to complete all activities the expiry of the deadline will result in the necessity of refusing to prosecute should induce efficient dealing with and analysing the reports on offences. However, then it would be necessary to 'extend' the starting point for filing complaints about inaction based on Article 306 § 3 CPC, i.e. to move the beginning of the time limit from which the entitled entity can complain about the inaction. Taking into account that the time limit for verification activities would be subject to statutory extension but to a minimal or insignificant extent, the starting point would also be slightly changed.

As it has been seen, there are no ideal solutions for the discussed issue. Each of the proposed options has advantages and disadvantages. The conducted analysis seems to show that the last of the presented solutions (another definite time limit) has most features of a compromise taking into account all axiological arguments concurring in the light of verification activities. It gains some approval expressed bearing in mind that the issue discussed in the paper will certainly continue to be the subject of debate.

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LEGAL NATURE OF THE TIME LIMIT FOR VERIFICATION ACTIVITIES (ARTICLE 307 § 1 CRIMINAL PROCEDURE CODE)

Summary

The article concerns the issue of verification activities which precede the institution of criminal proceedings and are aimed at determining legitimacy or admissibility of the criminal proceedings. The author focuses on the presentation of this problem from the viewpoint of the

legal nature of the time limit for the said proceedings. The article adopts a dogmatic and legal method. The existing regulation has been analysed, its defects identified and amendments proposed. The general goal of the discussion is to postulate the development of solutions that would result from proper balancing of protected interests of the administration of justice and the necessity to respect human rights.

Keywords: verification activities, time limit, criminal proceedings, institution of criminal proceedings

CHARAKTER PRAWNY TERMINU CZYNNOŚCI SPRAWDZAJĄCYCH (ART. 307 § 1 K.P.K.)

Streszczenie

Artykuł jest poświęcony zagadnieniu czynności sprawdzających poprzedzających wszczęcie postępowania karnego, służących ustaleniu zasadności lub dopuszczalności wszczęcia procesu. Autor analizuje tę problematykę z punktu widzenia kwestii dotyczącej charakteru prawnego terminu prowadzenia wspomnianych czynności. W opracowaniu przyjęto metodę dogmatyczno-prawną. Dokonano oceny obowiązującej regulacji normatywnej i sformułowano propozycje zmian. Całość rozważań ujętych w artykule jest podporządkowana postulatowi kreowania takich rozwiązań, które stanowią rezultat odpowiedniego zbilansowania ochrony dobra wymiaru sprawiedliwości oraz potrzeby poszanowania praw człowieka.

Słowa kluczowe: czynności sprawdzające, termin, proces karny, wszczęcie postępowania karnego

EL CARACTER LEGAL DEL PLAZO DE LA PRÁCTICA DE DILIGENCIAS DE AVERIGUACIÓN (ART. 307 § 1 DEL CÓDIGO DE PROCEDIMIENTO PENAL)

Resumen

El artículo versa sobre las diligencias de averiguación que preceden la incoación del procedimiento penal. Sirven para determinar la admisibilidad de incoación del proceso. El autor analiza esta problemática desde el punto de vista del caracter legal del plazo de la práctica de dichas diligencias. En la obra se utiliza el método dogmático-legal. Se valora la regulación normativa vigente y se propone modificaciones. Se postula crear soluciones que serán el resultado de equilibrio entre la protección del bien de justicia y la necesidad de respetar los derechos humanos.

Palabras claves: diligencias de averiguación, plazo, procedimiento penal, incoación del proceso penal

ПРАВОВОЙ ХАРАКТЕР ПРЕДЕЛЬНОГО СРОКА ДЛЯ ОСУЩЕСТВЛЕНИЯ ПРОВЕРОЧНЫХ ДЕЙСТВИЙ (СТ. 307 § 1 УПК)

Аннотация

Статья посвящена проверочным действиям, проводимым до возбуждения уголовного дела с целью выяснения обоснованности либо допустимости уголовного производства. Автор анализирует проблему с точки зрения правового характера предельного срока для осуществления таких действий. В работе применен догматически-правовой метод. Автор приводит оценку действующих нормативных положений и формулирует предложения по их изменению. При написании статьи автор руководствовался необходимостью поиска таких правовых решений, которые позволили бы соблюсти надлежащий баланс между интересами правосудия и необходимостью уважать права человека.

Ключевые слова: проверочные действия, предельный срок, уголовный процесс, возбуждение уголовного дела

DIE RECHTLICHE NATUR DER FRIST FÜR UNTERSUCHUNGSHANDLUNGEN (ARTIKEL 307 § 1 DER POLNISCHEN STRAFPROZESSORDNUNG)

Zusammenfassung

Der Artikel befasst sich mit der Frage der Untersuchungshandlungen, die der Einleitung eines Strafverfahrens vorangehen und die darauf abzielen, die Rechtmäßigkeit bzw. Zulässigkeit der Einleitung des Verfahrens festzustellen. Der Autor analysiert diese Problematik unter dem Gesichtspunkt der Frage nach dem rechtlichen Charakter der Frist für die Durchführung der genannten Handlungen. Zur Untersuchung der Frage wurde die dogmatisch-juristische Methode angewandt. Die geltende normative Regelung wird einer Beurteilung unterzogen und es werden Änderungsvorschläge gemacht. Alle in dem Artikel angestellten Überlegungen sind der dem Gebot der Schaffung von Lösungen untergeordnet, durch die ein entsprechendes Gleichgewicht zwischen dem Schutz des Interesses der Rechtspflege und der Notwendigkeit einer Achtung der Menschenrechte erreicht wird.

Schlüsselwörter: Untersuchungshandlungen, Frist, Strafverfahren, Einleitung des Strafverfahrens

NATURE JURIDIQUE DU DÉLAI POUR LES ACTIVITÉS DE VÉRIFICATION (ART. 307 § 1 DU CODE DE PROCÉDURE PÉNALE)

Résumé

L'article est consacré à la question des activités de vérification précédant l'overture d'une procédure pénale, afin de déterminer la légitimité ou la recevabilité de l'ouverture d'un procès. L'auteur analyse cette question du point de vue de la nature juridique du délai de réalisation de ces activités. L'étude adopte une méthode dogmatique et légale. La réglementation normative actuelle a été évaluée et des modifications ont été proposées. Toutes les considérations

contenues dans l'article sont subordonnées au postulat de création de solutions qui résultent d'un équilibre approprié entre la protection du bien de la justice et la nécessité de respecter les droits de l'homme.

Mots-clés: activités de vérification, délai, procès pénal, ouverture d'une procédure pénale

CARATTERE GIURIDICO DEL TERMINE DELLE ATTIVITÀ DI VERIFICA (ART. 307 § 1 DEL CODICE DI PROCEDURA PENALE)

Sintesi

L'articolo è dedicato alla questione delle attività di verifica che precedono l'avvio di un procedimento penale, finalizzate a stabilire la fondatezza o l'ammissibilità dell'avvio del procedimento. L'autore analizza tale problematica dal punto di vista della questione riguardante il carattere giuridico del termine di conduzione delle richiamate attività. Nell'elaborato si è utilizzato il metodo dogmatico-giuridico. È stata effettuata la valutazione delle regolamentazioni giuridiche vigenti ed è stata formulata una proposta di modifiche. Tutte le riflessioni contenute nell'articolo sono subordinate al postulato della creazione di tali soluzioni che costituiscano il risultato di un adeguato bilanciamento tra la tutela della giustizia e la necessità del rispetto dei diritti umani.

Parole chiave: attività di verifica, termine, procedimento penale, avvio di un procedimento penale

Cytuj jako:

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