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Gloss on the Supreme Court ruling of 23 July 2020, II KO 42/20

THESIS

A court lodging a motion with the Supreme Court in accordance with Article 37 Criminal Procedure Code (CPC) and urging that the state of health of a party to the proceedings is an indicator of the good of the administration of justice that admits the possibility of conducting a trial before another court of the same instance should, first of all, establish, in the way raising no doubts, that the circumstance is up-to-date on the day when the motion is lodged.[1]

COMMENTARY

In the ruling analysed, the Supreme Court determined the scope of obligations of a court lodging a motion in accordance with Article 37 CPC to refer a case for hearing to another court of the same instance and urging that the threat to the good of the administration of justice results from the lack of possibilities of conducting a trial before a court having territorial jurisdiction, due to the poor state of health of a party to the proceedings. This state of facts does not allow conducting a trial before a competent court in accordance with general principles (Articles 31 and 32 CPC) but offers such a possibility before another court of the same instance. The opinion expressed in the ruling is right and has a significant practical value.

The special entitlement of the Supreme Court laid down in Article 37 CPC is an exception to the general principles of determining territorial jurisdiction stipulated

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[1] The Supreme Court ruling of 23 July 2020, II KO 42/20, OSNKW 2020, No. 8, item 38.

in Articles 31 and 32 CPC. It is called extraordinary delegated competence (*forum extraordinatum*).[2] The hypothesis of this provision adopts a form of classical general clause with an unclearly specified scope of meaning[3] and makes it possible to eliminate a potential threat to the good of the administration of justice connected with the fact of hearing a case by a competent court.[4] The threat is untypical in nature and the circumstances that give grounds for the use of this institution cannot be predicted and, as a result, it is not possible to express them in the form of an abstract legal norm. What is equally important, some of them cannot be unambiguously verified, especially in the initial phase of judicial proceedings, when most often a motion is lodged with the Supreme Court in this mode. The principles of the rule of law require that a perpetrator should be tried by a court having jurisdiction over the location where an offence has been committed,[5] and the hearing of the case before a court competent, also territorially, is one of the basic procedural guarantees protected by the Constitution (Article 45 para. 1 of the Constitution of the Republic of Poland)[6] and international conventions[7] (Article 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950;[8] and Article 14 para. 1 of the International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966[9]). That is why, only the Supreme Court is given the right to choose a court of the same instance in this mode, which is a guarantee of impartiality and prudence.[10]

The capacity of the meaning of the term 'the good of administration of justice', in accordance with Article 37 CPC, makes the Supreme Court judgments issued based on it casuistic in nature, although they make it possible to identify some regularities and tendencies in judgments that are described in literature based on the analyses of case files.[11]

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[2] E.L. Wędrychowska, *Składy i właściwość sądu w nowym kodeksie postępowania karnego*, [in:] P. Kruszyński (ed.), *Nowe uregulowania prawne w kodeksie postępowania karnego z 1997 r.*, Warszawa 1999, pp. 119–120; S. Śliwiński, *Polski proces karny przed sądem powszechnym*, Warszawa 1959, p. 147.

[3] The Constitutional Tribunal judgments of 18 February 2004, K 12/03, OTK 2004, No. 2, item 8; and of 15 January 2009, K 45/07, OTK-A 2009, No. 1, item 3.

[4] J. Kosonoga, [in:] R.A. Stefański, S. Zabłocki (eds), *Kodeks postępowania karnego. Komentarz do art. 1–166*, Warszawa 2017, p. 522.

[5] The Supreme Court ruling of 24 September 1982, I KO 69/82, OSNPG 1983/2, item 18.

[6] The Supreme Court rulings: of 27 June 2019, V KO 45/19, LEX No. 2694519; of 29 January 2019, IV KO 126/18, LEX No. 2612839; of 11 July 2018, III KO 70/18, LEX No. 2522984; of 1 June 2010, IV KO 66/10, OSNwSK 2010, No. 1, item 1138; of 18 March 2010, III KO 16/10, LEX No. 577211.

[7] Where 'a court established by statute' is referred to.

[8] Dz.U. 1993, No. 61, item 284, as amended.

[9] Dz.U. 1977, No. 38, item 167.

[10] A. Mogilnicki, E.S. Rappaport, *Ustawy karne Rzeczypospolitej Polskiej*, Vol. I: *Kodeks postępowania karnego*, Part II: *Motywy ustawodawcze*, Warszawa 1929, pp. 54–55.

[11] S. Zabłocki, *Przekazanie sprawy do rozpoznania sądowi równorzędnemu ze względu na dobro wymiaru sprawiedliwości (art. 27 k.p.k.)*, Przegląd Sądowy 7–8, 1994, p. 3 et seq.; W. Grzeszczyk, *Właściwość miejscowa sądu z delegacji ze względu na dobro wymiaru sprawiedliwości (art. 37 k.p.k.)*, Prokuratura i Prawo 9, 2000, p. 121 et seq.; T. Artymiuk, *Przekazanie sprawy z sądu miejscowo właściwego do innego sądu równorzędnego (art. 37 k.p.k.) w orzecznictwie Sądu Najwyższego*, Studia i Analizy Sądu Najwyższego Vol. 1, 2007, p. 130 et seq.; R.E. Masznicz, *Przekazanie sprawy*

It is pointed out that it is possible in the case of the occurrence of real circumstances that may lead to a justified conviction that there are no conditions for the objective hearing of a case and, first of all, when there are doubts concerning impartiality of a competent court, and when there is a justified conviction that only referring of a case to another court will create better opportunities to adjudicate on the trial matter.[12]

The good of administration of justice may be endangered in a situation when adjudication by a court having territorial jurisdiction based on general rules would break the speed and efficiency of a trial, and referring a case for hearing to another court of the same instance is the only way to prevent this situation. Apart from obvious conditions for the functioning of justice administration in a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland), such as impartiality and independence,[13] adjudication on a case in reasonable time is equally important, and the legislator awards it the rank of a procedural directive (Article 2 § 1(4) CPC). The course of a trial that is not disrupted by standstills facilitates the collection of evidence and influences practical implementation of the principle of objective truth, minimises the risk of limitation of liability and, as a result, constitutes adequate response to the need for the right penal reaction. From the organisational point of view, it also reduces the proceeding costs. It also has impact on a court's prestige and positive social perception of the functioning of justice administration, in particular in a situation when accusations of sluggishness, inactivity, not to say incapacity, are common. Maintaining such a state is not in the interest of justice administration.[14]

The above does not mean that the provision of Article 37 CPC was intended to be a solution that will make common courts' organisational functioning proper.[15] The Supreme Court case law directly excludes the risk of limitation of liability from the scope of Article 37 CPC as a result of a competent court's heavy workload, which causes that it cannot hear all cases in a timely manner, and it rightly states that such situations are regulated in Article 11a of the Act of 6 June 1997: Provisions implementing the Code of Criminal Procedure[16]. The Supreme Court was also right

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ze względu na dobro wymiaru sprawiedliwości (art. 37 k.p.k.), Prokuratura i Prawo 7–8, 2007, p. 107 et seq.; L.K. Paprzycki, *Dobro wymiaru sprawiedliwości – art. 37 k.p.k.*, [in:] J. Jakubowska-Hara, C. Nowak, J. Skupiński (eds), *Reforma prawa karnego. Propozycje i komentarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej*, Warszawa 2008, p. 391 et seq.; J. Kosonoga, *Dobro wymiaru sprawiedliwości jako przesłanka dokonywania czynności procesowych w postępowaniu karnym*, [in:] W. Cieślak, S. Steinborn (eds), *Profesor Marian Cieślak – osoba, dzieło, kontynuacje*, Warszawa 2013, p. 886 et seq.

12 The Supreme Court rulings: of 20 January 2010, II KO 122/09, LEX No. 570143; of 8 March 2006, IV KO 17/06, LEX No. 611019; of 13 July 1995, III KO 34/95, OSNKW 1995, No. 9–10, item 68; of 13 February 1982, IV KO 9/82, OSNKW 1982, No. 6, item 33; of 27 May 1972, IV KO 31/72; OSNPG 1972, No. 9–10, item 158.

13 The Constitutional Tribunal judgments: of 9 June 1998, K 28/97, OTK 1998, No. 4, item 50; of 10 July 2000, SK 12/99, OTK 2000, No. 5, item 143.

14 The Supreme Court rulings: of 15 December 2010, II KO 100/10, OSNwSK 2010, item 2520; of 21 October 2008, II KO 78/08, LEX No. 465871.

15 The Supreme Court rulings: of 10 May 2000, II KO 90/00, OSNKW 2000, No. 5–6, item 48; of 21 May 1998, II KO 55/98, Prokuratura i Prawo 1999, No. 9, item 7.

16 Dz.U. No. 89, item 556, as amended; see the Supreme Court rulings: of 25 October 2007, IV KO 77/07, OSNwSK 2007, No. 1, item 2359; of 19 April 2007, II KO 21/07, OSNwSK 2007, No. 1,

to challenge the possibility of referring a case in accordance with Article 37 CPC due to organisational difficulties that hamper, but not prevent, a trial,[17] even if they are connected with the state of health of a party to the proceedings. As far as this is concerned, it is worth mentioning the Supreme Court's stand, in accordance with which the implementation of a preventive measure that is exercised in a psychiatric hospital which is over 550 kilometres away from a competent court does not constitute grounds for the application of the provision discussed if it is possible to overcome the obstacle by moving the applicant to another hospital that can meet the requirements of that preventive measure and is 140 kilometres from the court.[18]

The good of justice administration is also understood as the need to lead to a trial, which, due to the state of health of a party to the proceedings, is not possible without a departure from the principle of a court's territorial jurisdiction.[19] This condition concerns the accused and other parties to criminal proceedings (an extra auxiliary prosecutor, a subsidiary auxiliary prosecutor, a private prosecutor, an applicant, a person screened, etc.). It is not applicable to a public prosecutor, who is an attorney, which results directly from the principle of impartiality (Article 4 of the Act of 28 January 2016: Law on public prosecution[20]). The situation is analogous to other public prosecutors, although there is no clear statutory rule. Article 37 CPC may be also applied, based on statutory reference, to other proceedings in which the CPC provisions are applied by analogy, e.g. fiscal penal proceedings,[21] proceedings into a misdemeanour,[22] disciplinary proceedings, including those concerning judges

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item 877; of 10 January 2007, V KO 112/06, OSNwSK 2007, No. 1, item 129; of 9 August 2006, II KO 43/06 OSNwSK 2006, No. 1, item 1550; of 10 June 2003, II KO 22/03, LEX No. 78372; of 18 December 2002, II KO 63/02, LEX No. 74419; of 22 August 2002, II KO 34/02, LEX No. 55210.

[17] The Supreme Court ruling of 18 December 2002, II KO 63/02, LEX No. 74419; also see the Supreme Court rulings: of 16 May 2003, II KO 20/03, LEX No. 78382; of 17 November 2004, III KO 45/04, LEX No. 141344; of 9 August 2006, II KO 42/06, OSNwSK 2006, No. 1, item 1549; of 30 July 2007, II KO 41/07, KZS 2007, No. 10, item 46; of 12 February 2009, III KO 1/09, OSNKW 2009, No. 3, item 23.

[18] The Supreme Court ruling of 14 December 2011, IV KO 106/11, OSNwSK 2011, item 2374.

[19] See, e.g. the Supreme Court rulings: of 14 January 2020, V KO 105/19, LEX No. 2772524; of 7 August 2019, IV KO 86/19, LEX No. 2749739; of 19 July 2019, II KO 37/19, LEX No. 2715009; of 16 October 2018, IV KO 69/18, LEX No. 2583086; of 8 August 2018, II KO 39/18, LEX No. 2530705; of 27 April 2017, IV KO 37/17, LEX No. 2281271; of 23 February 2017, II KO 9/17, LEX No. 2238704: of 26 January 2017, V KO 95/16, LEX No. 2192667; of 20 October 2016, V KO 73/16, LEX No. 2135823; of 16 June 2015, III KO 36/15, LEX No. 1730710; of 22 January 2015, III KO 107/14, LEX No. 1604646; of 22 May 2014, III KO 21/14, LEX No. 1511250; of 18 December 2013, IV KO 104/13, LEX No. 1403904; of 28 November 2012, III KO 79/12, LEX No. 1228574; of 21 October 2008, III KO 82/08, OSNKW-R 2008, item 2054; of 21 August 2008, III KO 55/08, LEX No. 448977; of 12 August 2008, OSNKW-R 2008, item 1625, LEX No. 567071; of 26 January 2005, III KO 48/04, OSNKW 2005, No. 2, item 23.

[20] Consolidated text, Dz.U. 2019, item 740, as amended.

[21] See, e.g. the Supreme Court rulings: of 10 April 2018, III KO 37/18, LEX No. 2496272; of 4 July 2013, V KO 51/13, LEX No. 1335677; of 30 June 2010, III KO 57/10, OSNwSK 2010, No. 1, item 1331.

[22] See, e.g. the Supreme Court ruling: of 21 March 2018, III KO 9/18, LEX No. 2558299; of 17 May 2010, IV KO 52/10, OSNwSK 2010, No. 1, item 1032; of 27 January 2009, IV KO 184/08, LEX No. 608450.

and associate judges,[23] judge-advocates,[24] or in proceedings conducted in accordance with the Act of 17 June 2004 on complaints about the infringement of a party's right to hear a case without unjustified delay in preparatory proceedings carried out or supervised by a prosecutor and judicial proceedings[25].

As far as the subjective aspect is concerned, referring a case to another court of the same instance covers cases in which the state of health of a party is not so serious to prevent conducting a trial but a party's appearance in a court having territorial jurisdiction and participation in procedural activities are hampered. In such a situation, departure from the statutory territorial jurisdiction is not only purposeful but also really necessary if it creates a possibility of carrying out proceedings in accordance with Article 2 § 1(4) CPC.

A motion of a competent court in accordance with Article 37 CPC based on the above-mentioned criterion depends on meeting the following requirements:

1) A party's state of health prevents or considerably hampers his/her participation in proceedings before a court having territorial jurisdiction in accordance with general rules due to his/her inability to appear and endangers the exercise of procedural rights, in particular the right of the accused to a fair trial;
2) The circumstance has been convincingly pointed out and is up-to-date at the moment of lodging a motion with the Supreme Court;
3) There is a real possibility of conducting proceedings before another court of the same instance.

The first of the above-mentioned requirements constitutes actual grounds for a motion. It is most often applied at the initial stage of first-instance proceedings, that is when a trial has not started yet or it should be started over. There are no obstacles, however, to put forward the initiative at the successive stages of the proceedings, including appellate proceedings. The complete lack of possibility of a party's participation in the proceedings occurs in a situation when physicians recommend complete exclusion of the possibility of appearing before a court having territorial jurisdiction. Most often it happens in cases when the place of residence and the location of a court require the travel for a long distance which is not recommended because of medical reasons or would create direct risk to health or life.[26] A real fear of creating the risk of worsening a party's state of health is a sufficient reason. The criterion of 'exposing health and life to serious risk' should be recognised as too absolute.[27] As far as this is concerned, what is important is the possibility of getting to a court on one's own. Other inconveniences connected with the conducted proceedings, even if they have health-related grounds, are insignificant, e.g. the strengthening of depression, or the occurrence of anxiety

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[23] See, e.g. the Supreme Court rulings: of 18 September 2017, SNO 33/17, LEX No. 2389604; of 16 July 2010, SNO 33/10, LEX No. 1289089; the Supreme Court resolution of 28 April 2009, SNO 27/09, LEX No. 1288838.

[24] The Supreme Court ruling of 9 February 2018, WO 1/18, LEX No. 2440473.

[25] Consolidated text, Dz.U. 2018, item 75, as amended; the Supreme Court ruling of 12 March 2013, KSP 2/13, LEX No. 1288771.

[26] The Supreme Court ruling of 12 December 2017, V KO 102/17, LEX No. 2420348.

[27] The Supreme Court ruling of 23 February 2017, II KO 9/17, LEX No. 2238704.

disorders because of the fear of the trial result. It also concerns such situations in which appearance before a court is theoretically possible but it would be connected with excessive inconveniences in a particular trial and constitute an extra suffering exceeding the standard consequences of participation in a trial to an obvious extent. The requirement is evaluative in nature. First of all, it is necessary to consider the opportunity to use public transport adequate to the state of health and average travel costs. As far as this is concerned, one must take into account the system of connections and their convenience from the point of view of a party's particular illnesses or disabilities. It should be considered whether it is purposeful to lodge a motion pursuant to Article 37 CPC also in a situation when coming to a court is possible without risk to health but requires assistance from other people, travelling by a hired or own vehicle or by public transport but one with limited availability (many changes or transfers, a long period of waiting for the next means of transport, lack of low-floor vehicles, extraordinary cost of air or rail travel), the necessity of taking medicine in the form of injections during such journey, etc.

However, there are no grounds for referring a case for hearing to another court of the same instance if a party needs medical assistance during the participation in procedural activities or assistance in moving in the court building, e.g. when it is not adjusted to the needs of disabled persons. The obligation to ensure architectural, and information- and communication-related accessibility of a court and, in case of the lack of such accessibility, the so-called alternative access to persons with special needs, including parties to criminal proceedings, is technical and organisational in nature and is provided based on the provisions of the Act of 19 July on the provision of accessibility to persons with special needs.[28] The Supreme Court's role under Article 37 CPC should not involve substituting judicial bodies in the fulfilment of their statutory obligation to ensure accessibility to disabled persons. However, it cannot be excluded that in particular circumstances it may prove to be purposeful for the Supreme Court to exercise this entitlement, especially in case of special coincidence of circumstances unfavourable for a party.

It is in the interest of the administration of justice to conduct criminal proceedings with no harm to a party's procedural guarantees. This circumstance is also important from the point of view of the reason for referring a case for hearting to another court of the same instance. Those grounds lose validity when a party alone gives up his/her rights and agrees for the conduction of the proceedings in his/her absence. A motion under Article 37 CPC should contain an unambiguous statement concerning this issue because in case a party does not want to participate in the procedural activities on his/her own or decides to participate only via counsel or proxy and his/her appearance before a court has not been recognised as obligatory, or this obligation does not result from statute (Article 374 § 1a CPC), there is no need to refer a case to another court. Participation in a trial is, as a rule, a party's right but lodging a motion in accordance with the above-mentioned provision, one cannot presume that he/she will want to exercise this right. Therefore, if the need to lodge a motion in accordance with Article 37 has not been notified by a party

[28] Consolidated text, Dz.U. 2020, item 1062.

pursuant to Article 9 § 2 CPC, it is necessary to establish his/her stance and order that a party should be asked to make a declaration concerning this issue. However, this poses an easily noticeable risk. On the one hand, the hearing can result in the need to summon a party to appear before a court in person. On the other hand, it is also possible that in the course of a trial a party may change the earlier stance and he/she may want to provide explanation, testimonies, opinions on particular evidence, present his/her stance or make a final speech. A court can also encounter procedural disloyalty in the field, which may prove to be difficult to discredit in the face of a guaranteed right to act in the proceedings in person, in particular the exercise of the right of the accused to a fair trial. As the author's experience shows, common courts seem to notice those dilemmas, which is sometimes confirmed in the content of motions lodged with the Supreme Court, in which one can see phrases like 'it is not inconceivable' that a party will try to exercise his/her right to appear in person. That is why, the refusal to refer a case cannot be too hasty as it can complicate proceedings at its successive stages, e.g. due to the necessity to adjourn a trial. However, within the scope of its considerations, the Supreme Court should take into account that a competent court may sometimes tend to free itself from the obligation to hear a case. There are no statutory obstacles to lodge a motion with the Supreme Court, again pursuant to Article 37 CPC, in case of a significant change in circumstances that are grounds for such motion.[29] However, referring a case in the course of a trial causes a necessity of starting it afresh, thus it is in conflict with the principle of efficiency and economy of proceedings.

The state of health that justifies a motion must be proved. This means the necessity of collecting evidence justifying lodging a motion and assessing it through the prism of provisions laid down in Article 7 CPC. The occurrence of a given type of illness alone that raises doubts whether a party can participate in a trial does not have to justify calling expert witnesses each time. The discretion to assess evidence prescribes recognition that a court may base its decision on evidence provided by a party, e.g. a surgery or hospital treatment documents, physicians' certificates, disability certificate, etc., clearly indicating particular impairments, especially those that are permanent. The assessment of credibility of the evidence provided by a party is within the competence of a court lodging a motion with the Supreme Court and cannot be transferred to the Supreme Court, which sometimes happens.[30] The occurrence of some doubts in this area, in general, obliges a court to call expert witnesses in order to unambiguously establish whether the state of health of a party really prevents or considerably hampers efficient course of a trial and, at the same time, if it seems likely that proceedings will be conducted before another court of the same instance with the participation of the party. Expert witnesses' statements should be absolute in nature and determine potential additional medical indications that should be considered when selecting a court's location. It most often concerns the distance (taking into account the length of a journey and the means of transport)

[29] The justification of the Supreme Court ruling of 22 November 2019, IV KO 120/19, OSNKW 2020, No. 1, item 4 (*in fine*).

[30] The Supreme Court ruling of 27 March 2019, II KO 15/19, LEX No. 2639500.

that a party can cover without the risk of worsening his/her state of health. An expert witness's opinion seems indispensable in case of illnesses that are characterised by varied intensity of symptoms or in which a patient's condition changes, and there are remission periods. From this point of view, an opinion should include conclusions concerning the predicted period of inability to participate in proceedings before a competent court. Temporary inability to participate in the proceedings that can disappear in a reasonable period, e.g. not exceeding half a year, does not substantiate referring a case to another court pursuant to Article 37 CPC. On the other hand, it is also conceivable that a party's state of health will gradually deteriorate, which can make his/her participation impossible at successive stages of a long trial, and should constitute an argument for exercising the entitlement by the Supreme Court.

If the state of health concerns the accused and constitutes grounds for discontinuation of proceedings, the *sine qua non* requirement for lodging a motion referred to in Article 37 CPC is that the proceedings have been instigated.[31] The Supreme Court was right to assume that, on the one hand, the grammatical interpretation of Article 22 § 3 CPC, which prescribes the performance of some activities at the time when proceedings are suspended but only in case they cover the protection of evidence against loss or damage, supports it. On the other hand, the functional context is an argument for the exclusion of the possibility of making use of the initiative referred to in Article 37 CPC at the time when proceedings are suspended. After the application of Article 37 CPC, the proceedings would have to be undertaken by another body than the one that has suspended it.

In the discussed ruling, the Supreme Court emphasised the need to establish whether the requirement in question is up-to-date. It should be understood as both the confirmation of the occurrence of illnesses that a party suffers from, which can potentially prevent or considerably hamper the course of criminal proceedings with his/her participation as well as the fact that the threat is materialised in the process being the basis for lodging a motion with the Supreme Court. The fulfilment of the first of the requirements discussed is not sufficient. One cannot assume that an impairment of some kind cannot, on a party's initiative, be overcome, e.g. with the help of another person who provides transport or necessary care. It is also hard to assume that in every case a party will be interested in the proceedings conducted before a court closer to the place of his/her residence. One can imagine a situation in which a trial conducted before a court having territorial jurisdiction creates opportunities to end the proceedings faster, e.g. because of its lower workload, which a party is aware of and on his/her own initiative will take steps to obtain other persons' assistance. Also in case of illnesses with different occurrence of symptoms, one cannot exclude the above-mentioned remission. In case many proceedings with the participation of a party are carried out, the determination of territorial jurisdiction by the Supreme Court in accordance with Article 37 CPC in one or even a few of them does not prejudge the grounds for lodging a motion in every successive trial. However, referring all cases concerning the accused to one

[31] The Supreme Court ruling of 22 November 2019, IV KO 120/19, OSNKW 2020, No. 1, item 4.

court established in accordance with the discussed provision may have positive impact on the coordination of activities undertaken in those cases.[32]

A court lodging a motion should take care of an up-to-date medical opinion confirming permanent inability to appear before a court, in particular in the case when the real grounds for a motion are reconstructed based on evidence derived from official documents issued in the past, or documents that are not procedural in nature, e.g. private opinions or opinions developed for the needs of other proceedings.

Obtaining an expert-witness's opinion indicating the need to refer a case should result in the assignment of a sitting concerning a motion in the nearest possible time so that the evidence in question will not become out-of-date at the moment when a motion is lodged with the Supreme Court. It is inadmissible, also if lengthiness of proceedings is not the case, to delay taking steps in order to lodge a motion in accordance with Article 37 CPC, which in one case heard by the Supreme Court led to inability to run the proceedings for four years from the date when an indictment was placed.[33]

A party's state of health that constitutes grounds for referring a case in accordance with Article 37 CPC must create chances for conducting proceedings.[34] Referring a case in this mode is not possible if, in accordance with the results of the evidence-related proceedings concerning the state of health of the accused, the only possible procedural decision is one on the suspension of judicial proceedings.

In cases in which a court competent to hear a case lodges a motion with the Supreme Court to refer this case for hearing to another court of the same instance due to the good of administration of justice (Article 37 CPC), a detainee awaiting a trial is not at the Supreme Court's disposal. It is rightly noticed that until a motion lodged with the Supreme Court is dealt with, the case remains a pending one before a competent court. Territorial jurisdiction, also in the context of functional competence, may be changed only when the Supreme Court refers the case to another court of the same instance. However, also in such a situation, this case will never be a case pending before the Supreme Court and will not result in the need to transfer the suspect or the accused to the disposal of the Supreme Court.[35]

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[32] The Supreme Court ruling of 17 July 2019, IV KO 59/19, LEX No. 2713726.

[33] The Supreme Court ruling of 7 June 2000, II KO 105/00, Prokuratura i Prawo – dodatek orzecznictwo 11, 2000, item 4.

[34] The Supreme Court ruling of 13 February 2020, IV KO 172/19, LEX No. 2779949.

[35] The order of the Chair of Department IV of the Supreme Court Criminal Chamber of 25 June 2019, IV KO 77/19, OSNKW 2019, No. 8, item 50.

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GLOSS ON THE SUPREME COURT RULING OF 23 JULY 2020, II KO 42/20

Summary

The ruling that is analysed in the gloss concerns the scope of obligations of a court that lodges a motion with the Supreme Court in accordance with Article 37 CPC to refer a case for hearing to another court of the same instance, and states that the risk to the good of the administration of justice results from the lack of possibilities of conducting a trial before a court having territorial jurisdiction, due to the bad state of health of a party to the proceedings. Providing the justification of the Supreme Court extended by the criteria for referring a case in accordance with Article 37 CPC, the author proves the grounds for the opinion that the discussed requirement must be up-to-date on the date of lodging the motion concerned.

Keywords: judicial proceedings, court, the good of administration of justice, state of health of a party to proceedings, territorial jurisdiction, delegated competence

GLOSA DO POSTANOWIENIA SĄDU NAJWYŻSZEGO Z 23 LIPCA 2020 R., II KO 42/20

Streszczenie

Glosowane postanowienie dotyczy zakresu obowiązków sądu zwracającego się w trybie art. 37 k.p.k. do Sądu Najwyższego o przekazanie sprawy do rozpoznania innemu sądowi równorzędnemu i podnoszącego, że zagrożenie dla dobra wymiaru sprawiedliwości wynika z braku możliwości prowadzenia procesu przed sądem miejscowo właściwym z uwagi na zły stan zdrowia strony postępowania. Autor – rozbudowując argumentację przedstawioną

przez Sąd Najwyższy o kryteria przekazania sprawy na tej podstawie w trybie art. 37 k.p.k. – wykazuje zasadność poglądu, że omawiana przesłanka musi pozostawać aktualna w dacie wystąpienia ze stosownym wnioskiem.

Słowa kluczowe: postępowanie sądowe, sąd, dobro wymiaru sprawiedliwości, stan zdrowia strony postępowania, właściwość miejscowa, właściwość z delegacji

COMENTARIO DEL AUTO DEL TRIBUNAL SUPREMO DE 23 DE JULIO DE 2020, II KO 42/20

Resumen

El auto comentado se refiere a las obligaciones de Jueces o Magistrados que se dirijan conforme con el art. 37 del Código de Procedimiento Penal al Tribunal Supremo para delegar el caso para que lo conozca otro Juzgado o el Tribunal del mismo rango, alegando que el perjuicio para la Justicia resulta de la imposibilidad de llevar a cabo el proceso ante el Juzgado o el Tribunal territorialmente competente debido al estado de salud de las partes del proceso. El autor – desarrollando la argumentación presentada por el Tribunal Supremo relativa a los requisitos de la delegación del caso en virtud del art. 37 del Código de Procedimiento Penal – demuestra que la postura presentada ha de ser actual siempre y cuando dichos requisitos se cumplan en el momento de presentar tal solicitud.

Palabras claves: procedimiento judicial, Juzgado, Tribunal, justicia, estado de salud de las partes del proceso, competencia territorial, delegación

КОММЕНТАРИЙ К ПОСТАНОВЛЕНИЮ ВЕРХОВНОГО СУДА ОТ 23 ИЮЛЯ 2020 Г., II KO 42/20

Аннотация

Комментируемое постановление касается обязанностей суда, обращающегося в Верховный суд с ходатайством о передаче дела на рассмотрение в другой суд такой же или высшей инстанции в порядке ст. 37 УПК на том основании, что интересы правосудия не могут быть соблюдены при проведении судебного процесса в суде надлежащей территориальной юрисдикции по причине плохого состояния здоровья одной из сторон процесса. Автор, развивая аргументацию Верховного суда касательно критериев для передачи дела в порядке статьи 37 УПК, подтверждает обоснованность мнения о том, что вышеупомянутая предпосылка для передачи дела должна существовать на день соответствующего ходатайства.

Ключевые слова: судопроизводство; суд; интересы правосудия; состояние здоровья стороны процесса; территориальная юрисдикция; передача дела в суд иной территориальной юрисдикции

KOMMENTAR ZUM BESCHLUSS DES SĄD NAJWYŻSZY VOM 23. JULI 2020, II KO 42/20

Zusammenfassung

Der Beschluss, über den abgestimmt wurde, betrifft den Aufgabenbereich des ersuchenden Gerichts, das nach Art. 37 der polnischen Strafprozessordnung beim Sąd Najwyższy, der höchsten Instanz in Zivil- und Strafsachen in Polen, beantragt, eine Rechtssache zur Prüfung an ein anderes gleichgestelltes Gericht zu verweisen und dabei geltend macht, dass eine Gefahr für das Interesse der Rechtspflege gegeben ist, da keine Möglichkeit besteht, das Verfahren aufgrund des schlechten Gesundheitszustands des Verfahrensbeteiligten vor dem örtlich zuständigen Gericht durchzuführen. Der Verfasser erweitert die vom Sąd Najwyższy vorgebrachte Argumentation um Kriterien für die Abgabe einer Rechtssache auf dieser Grundlage gemäß Art. 37 der polnischen Strafprozessordnung und weist die Rechtmäßigkeit der Auffassung nach, dass die in Rede stehende Voraussetzung zum Zeitpunkt des entsprechenden Ersuchens gegeben sein muss.

Schlüsselwörter: Gerichtsverfahren, Gericht, Interesse der Rechtspflege, Gesundheitszustand von Verfahrensbeteiligten, örtliche Zuständigkeit, Zuständigkeit durch Verweisung

COMMENTAIRE SUR L'ARRÊT DE LA COUR SUPRÊME DU 23 JUILLET 2020, II KO 42/20

Résumé

La décision commentée concerne l'étendue des devoirs du tribunal demandant, conformément à l'art. 37 du code de procédure pénale, à la Cour suprême de renvoyer l'affaire devant une autre juridiction équivalente, et faisant valoir que la menace pour le bien de l'administration de la justice résulte de l'incapacité de conduire un procès devant un tribunal local compétent en raison de la mauvaise santé de la partie à la procédure. En élargissant les arguments présentés par la Cour suprême avec les critères de transfert de l'affaire sur cette base en vertu de l'art. 37 du code de procédure pénale, l'auteur démontre le bien-fondé de l'opinion selon laquelle la prémisse discutée doit rester valable à la date de dépôt de la demande pertinente.

Mots-clés: procédure judiciaire, tribunal, bien de la justice, état de santé d'une partie à la procédure, compétence territoriale, compétence de délégation

GLOSSA ALL'ORDINANZA DELLA CORTE SUPREMA DEL 23 LUGLIO 2020, II KO 42/20

Sintesi

L'ordinanza commentata riguarda l'ambito degli obblighi del Tribunale che si rivolge alla Corte Suprema, ai sensi dell'art. 37 del Codice di procedura penale, richiedendo il trasferimento di un procedimento ad un altro tribunale di pari grado, sostenendo che la minaccia per gli interessi della giustizia derivi dall'impossibilità di svolgere il processo nel foro territorial-

mente competente a motivo delle cattive condizioni di salute di una parte del procedimento. L'autore, sviluppando l'argomentazione presentata dalla Corte Suprema circa i criteri di trasferimento del procedimento su tale base ai sensi dell'art. 37 del Codice di procedura penale, mostra la fondatezza della posizione che la condizione indicata debba essere attuale alla data di presentazione della relativa richiesta.

Parole chiave: procedimento giuridico, tribunale, interessi della giustizia, condizioni di salute di una parte del procedimento, competenza territoriale, competenza per delega

Cytuj jako:

Dąbrowski J.A., *Gloss on the Supreme Court ruling of 23 July 2020, II KO 42/20 [Glosa do postanowienia Sądu Najwyższego z 23 lipca 2020 r., II KO 42/20]*, „Ius Novum" 2020 (14) nr 3, s. 207–219. DOI: 10.26399/iusnovum.v14.3.2020.34/j.a.dabrowski

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