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Inadmissibility of Objections in Criminal Proceedings*

Niedopuszczalność zarzutów odwoławczych w postępowaniu karnym

ABSTRACT

The article is of a scientific and research nature. The analyzed issue is the institution of inadmissible objections specified in Article 378a § 4, Article 427 § 3a, Article 447 § 5 and Article 447 § 6 of the Criminal Procedure Code. Examining this research theme is justified by numerous problems related to the interpretation of the provisions governing this institution and the legal consequences of raising inadmissible objections in appeal. Moreover, the justification for conducting research results from the constitutional and conventional consequences of the inadmissibility of objections in criminal proceedings institution. So far, this issue has not been comprehensively described. The thesis was put forward that the provisions governing inadmissible objections were incorrectly formulated and the catalogues covering such claims are not strictly defined. Then, the thesis was put forward that the Criminal Procedure Code does not directly express the consequences of raising such claims, which requires a functional interpretation of the provisions of the Criminal Procedure Code. As a result of the considerations, *de lege ferenda* conclusions are formulated. The presented research is important for the dogmatics of criminal procedural law and the practice of application of the provisions discussed.

Keywords: appeal objections; appeal; appeal proceedings; criminal proceedings; consensual procedures

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INTRODUCTION

Inadmissible objections are allegations of infringements that cannot be raised in appeals under pain of certain procedural consequences. In the Criminal Procedure Code,[1] inadmissible grounds of appeal are defined in Article 378a § 4, Article 427 § 3a, Article 447 § 5 and Article 447 § 6. The institution in question can be examined in two spheres. The first is the sphere of the catalogue of inadmissible objections, which is related to the terminological consistency of the provisions and the specificity of this catalogue. The second is the sphere of legal consequences related to making such allegations. It concerns the issue of coherence of legal consequences, the existence of a legal basis for refusing to accept or leaving an appeal without consideration, and the effects of filing an appeal containing both inadmissible and admissible objections and one that does not contain any objections at all.

The institution in question is important from the point of view of constitutional principles such as the right to appeal against judgments (Article 78 of the Polish Constitution[2]) and the right to two-instance court proceedings (Article 176 (1) of the Polish Constitution).[3] Its existence is also related to such procedural principles as, e.g., the principle of substantive truth and the principle of the right to defence. The need to examine the titular institution is also justified by empirical considerations. According to the research, almost half of judgments are made using consensual methods. It means that for almost half of the judgments, the legislator provides a different model for appealing against judgments.[4] Statistics for 2023 show that judgments using consensual procedures were issued in district courts in approx. 71,000 cases (out of a total of 355,000 cases) against approx. 74,000 accused. However, in district courts, judgments in these modes were issued in approx. 900 cases (out of a total of 9,500 cases) compared to approx. 2,300 accused. District courts examined approximately 1,000 appeals against such judgments, while the courts of appeal – about 70.[5] This proves the significant and very practical importance of the examined problem.

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[1] Act of 6 June 1997 – Criminal Procedure Code (Journal of Laws 1997, no. 89, item 555, as amended), hereinafter: CPC.

[2] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.10.2024).

[3] More on these rules, see P. Wiliński, *Konstytucyjne uwarunkowania postępowania odwoławczego w procesie karnym*, [in:] *Postępowanie odwoławcze w procesie karnym – u progu nowych wyzwań*, ed. S. Steinborn, Warszawa 2016, pp. 102–113; idem, *Proces karny w świetle Konstytucji*, Warszawa 2011, p. 152.

[4] W. Jasiński, *Porozumienia procesowe w znowelizowanym kodeksie postępowania karnego*, "Prokuratura i Prawo" 2014, no. 10, pp. 5–6.

[5] Ministerstwo Sprawiedliwości, Ogólnopolskie sprawozdania sądów powszechnych, komorników i notariuszy za rok 2023 r., https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne-w-tym-pliki-dostepne-cyfrowo/rok-2023 (access: 2.7.2024).

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CATALOGUE OF INADMISSIBLE OBJECTIONS

1. Editorial correctness

At the beginning, a few comments should be made regarding the editorial correctness of the provisions specifying inadmissible appeal grounds. The regulations referred to as inadmissible objections use different terminology. Thus, Article 378a § 4 CPC states that "it is not permissible to raise allegations", Article 427 § 3a CPC that "no objections may be raised", Article 447 § 5 CPC that "an appeal may not be based on objections", and Article 447 § 6 CPC that "an appeal may not be based exclusively on objections". In the quoted regulations, only the first of the cases refers terminologically to the issue of admissibility of an appeal, while the remaining ones simply specify the prohibition of formulating objections. The lack of terminological consistency should be assessed negatively. However, conclusions regarding the correct regulation of the issue in question can only be made after analysing the correctness of terminology.

All of the regulations set the scope of inadmissible appeals based on the connection between both abstractly presented circumstances and an objection, i.e. in connection with an objection of infringement contained in the appeal.[6] Additionally, in the case of Article 447 § 5 CPC, the act sets the scope incorrectly, because it states that the basis for an appeal cannot be "allegations specified in Article 438 (3) and (4) CPC", while there is no doubt that Article 438 CPC specifies the infringements that, when found by the court, constitute objective grounds for repealing or amending the contested judgment, and not the types of objections.[7] The manner in which the act defines legally relevant infringements in appeals is a matter of convention resulting most often from the model of the appeal and the purpose of isolating certain types of infringements. However, taking into account the commonly accepted interpretation of Article 438 CPC it must be assumed that the content of Article 447 § 5 CPC has been formulated incorrectly. These views are also presented in the doctrine.[8]

In the analysed context, it is necessary to answer the question whether it is possible to build a coherent terminology for all cases of inadmissible appeal objections, whether this terminology should refer to objections or infringements

[6] Cf. M. Cieślak, *Podstawowe pojęcia dotyczące rewizji według k.p.k.*, [in:] *Prawo karne procesowe: artykuły, studia i inne prace*, vol. 4, Kraków 2011, p. 145; S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2016, p. 550.

[7] D. Świecki, *Postępowanie odwoławcze w sprawach karnych. Komentarz, orzecznictwo*, Warszawa 2022, p. 137.

[8] Idem, *Ograniczenie podstaw odwoławczych do wniesienia apelacji w trybach konsensualnych (art. 447 § 5 k.p.k.)*, "Przegląd Sądowy" 2019, no. 9, p. 26; S. Zabłocki, [in:] *Kodeks postępowania karnego*, vol. 4: *Komentarz do art. 425–467*, eds. R.A. Stefański, S. Zabłocki, Warszawa 2021, p. 579.

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and whether these cases should be defined in a negative way (which cannot be) or positive (what may be) the subject of an appeal. First of all, we should take the position not so much about the possibility, but even about the necessity of developing a coherent conceptual framework for all cases of the above-mentioned objections. This conceptual grid should be based on the concept of infringement. This is also the nature of the regulations that are currently included in the CPC, specifically the infringements on which objections in appeals may be based (Article 523 § 1 and Article 539a § 3 CPC). However, due to the nature of the appeal proceedings (including the scope of deficiencies, the finding of which may result in the annulment or amendment of the contested judgment), it is necessary to use terminology that includes the catalogue of inadmissible appeal objections from the negative side. These provisions could be formulated as follows: "the basis for an appeal cannot be an infringement" ("an appeal cannot be brought because of an infringement"), or referring to the issue of admissibility: "it is inadmissible to bring an appeal because of an infringement". Taking into account the further postulated need to change the wording of Article 429 § 1 CPC we should support the first two proposed wordings of the regulations.

Critical comments can also be made as to the place where these provisions are placed in the CPC. The inclusion of such provisions in part of the CPC regulating proceedings before the court of first instance (Article 378a § 4 CPC) should be considered incorrect. Such provisions should be included in Section IX CPC regulating appeal proceedings. Due to the importance of the institution of inadmissibility of appeal charges in criminal proceedings, it should be considered putting them in a separate editorial unit. Such a solution would increase the communication value for participants in the proceedings, clearly indicating what allegations may be formulated in an appeal in a given situation. However, the provisions relating to the earlier stages of the proceedings should specify the obligation to instruct the participant in the proceedings about the consequences of this procedural institution.

2. Specificity of the catalogue

A thesis needs to be put forward that the scope of inadmissible appeals is not strictly defined and raises significant doubts in interpretation. There are large differences in jurisdiction and doctrine as to what objections should be considered inadmissible.

The first case that undoubtedly deserves the most extensive discussion is Article 447 § 5 CPC which is an area of discrepancies in case law and literature related to attempts to circumvent the rigors of this regulation. The rigors associated with the institution of inadmissibility of appeals against judgments issued under consensual procedures are being avoided by raising objections that the provisions of the proceedings are in breach of: 1) the scope of evidence assessment; 2) specifying

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the statutory condition for adjudicating under consensual procedures in a situation where the circumstances of the case and the guilt do not raise any doubts. The admissibility of objections relating to correctness of application of the rules of procedure in the field of evidence assessment raises doubts in the jurisprudence and in the doctrine. These regulations may include, among others, Article 7 and Article 5 § 2 CPC, and in the case of proceedings at a trial, e.g., Article 410 CPC, and in the case of a hearing – Article 97 CPC. A problem arises as to the admissibility of appeals concerning breach of procedural provisions relating to the assessment of evidence (in particular Article 7 CPC, which specifies the principle of free assessment of evidence). With regard to the allegation of violation of this provision, the doctrine presents both a view denying the admissibility of making such an objection[9] and also recognizing such an objection as admissible.[10] The lack of uniformity on this subject can also be found in jurisprudence. For example, the Court of Appeal in Warsaw in its judgment of 9 November 2017 indicated that raising an objection of violation of Article 7 CPC is unacceptable because it always results in an error in factual determinations.[11] A different position was presented, i.a., in the judgment of the Court of Appeal in Poznan of 7 December 2017, in which the Court stated the admissibility of the objection of violation of Article 7 CPC due to the fact that this plea, as a primary infringement, refers to a relative ground for appeal in the form of contempt of the procedural rules.[12] Doubts may arise as to the admissibility of appeals against judgments issued under consensual procedures in a situation where the objection relates to a violation of the conditions for the use of the consensual procedure in the form of lack of doubt as to guilt and the circumstances of committing a crime as stipulated in Articles 343, 343a and 387 CPC. The view that such an objection is admissible indicates that although such an action aims to circumvent the prohibition of Article 447 § 5 CPC, since the use of consensual procedures does not release the court from the obligation to pursue the truth, the admissibility of such an objection is explicitly indicated, which is to lead the appellate court to

[9] Cf. M. Fingas, *Zakres rozpoznania sprawy przez sąd odwoławczy w przypadku zaskarżenia przez tzw. stronę prywatną orzeczenia wydanego w trybie konsensualnym*, [in:] *Verba volant, scripta manent. Proces karny, prawo karne skarbowe i prawo wykroczeń po zmianach z lat 2015–2016*, eds. T. Grzegorczyk, R. Olszewski, Warszawa 2017, p. 604.

[10] Cf. W. Kociubiński, *Zakres orzekania sądu odwoławczego w świetle ustawy z 27 września 2013 r. o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*, "Wrocławskie Studia Sądowe" 2014, vol. 1, p. 44; idem, *Skarga odwoławcza i sposób jej rozpoznania przez sąd odwoławczy po 1.07.2015 r. – wybrane zagadnienia*, "Przegląd Sądowy" 2016, no. 1, p. 35; D. Świecki, *Ograniczenie podstaw…*, p. 27; S. Zabłocki, *op. cit.*, p. 581.

[11] Judgment of the Court of Appeal in Warsaw of 9 December 2017, II AKa 346/17, Legalis no. 1696416.

[12] Judgment of the Court of Appeal in Poznan of 7 December 2017, II AKa 217/17, Legalis no. 2272057.

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examine the factual findings and assess the evidence.[13] The literature indicates that recognizing such allegations as admissible would result in the deprivation of the real meaning of the indicated regulation, and the admissibility of the appeal would depend not on the essence of the infringement in question, but on the stylistic approach to the appeal objection.[14] The thesis was put forward that formally this type of objections is admissible.[15] The case law, including the decision of the Court of Appeal in Wroclaw of 27 April 2016,[16] presented a different position, which resulted in maintaining in force the decision to leave the appeal based on the alleged violation of Article 387 § 2 CPC. A way to remedy the faulty regulation is sought primarily in an appropriate amendment to Article 447 § 5 CPC.[17]

Although the issues related to the catalogue set out in Article 378a § 4 CPC are not the subject of so many theses, they require a separate discussion. It is argued in the literature, that the sphere of inadmissibility of the objection under Article 378a § 4 CPC is included in the so-called formal objection, i.e. the objection of violation of procedural guarantees, and therefore does not include the so-called material objection, i.e. as to the improper taking of evidence by the court in the absence of the defence counsel or the accused.[18] In this situation, it is also inadmissible to demonstrate the consequences of the defendant's or defence counsel's inactivity in the sphere of the evidentiary basis of the ruling, e.g. the inability to ask specific questions to the witness. On the other hand, an objection of improper taking of evidence by the court, i.e. a violation of Article 366 § 1 or Article 391 § 1 CPC, is considered admissible.[19] The admissibility of such an objection is related to the principle of substantive truth (Article 2 § 2 CPC). Such an interpretation must be accepted for warranty reasons. On the other hand, it is impossible not to notice the shortcomings of this position on the basis of the teleological interpretation of the provision in question. It may lead to circumvention of the provision by formulating allegations relating not so much to the obstruction of the defence counsel or the accused, but to the failure of the presiding judge to fulfil certain obligations. In the light of such a view, it would be possible to raise, e.g., that the presiding judge failed to explain certain circumstances pursuant to Article 366 § 1 CPC by failing to ask certain questions to a witness.

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[13] M.J. Szewczyk, *Ograniczenie zakazu reformationis in peius oraz podstaw apelacyjnych w ujęciu art. 434 § 4 k.p.k. i art. 447 § 5 k.p.k.*, "Prokuratura i Prawo" 2017, no. 11, pp. 96–97, 102.

[14] M. Fingas, *op. cit.*, p. 604.

[15] D. Świecki, *Ograniczenie podstaw…*, p. 27.

[16] II AKa 90/16, Legalis no. 1460421.

[17] D. Świecki, *Ograniczenie podstaw…*, p. 27; idem, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2: *Art. 425–673*, ed. D. Świecki, Warszawa 2022, p. 289; S. Zabłocki, *op. cit.*, p. 581.

[18] D. Świecki, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 1: *Art. 1–424*, ed. D. Świecki, Warszawa 2022, p. 1531.

[19] *Ibidem*.

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The third provision requiring commentary is set out in Article 427 § 3a CPC. The doubts concerning the interpretation of the scope of the inadmissible grounds of appeal to which this provision refers are convergent with such doubts formulated on the basis of Article 170 § 1a and Article 452 § 3 CPC. This provision raises doubts as to whether the disposition covers only passivity in the sphere of the court's evidentiary initiative, or also in the sphere of passivity in the sphere of active taking of evidence.[20] In the legal literature, one can come across theses from which it can be inferred that it would apply both to passivity in the sphere of the initiative of evidence and to the taking of evidence itself. Such a position cannot be accepted. In the first place, it is necessary to refer to the historical interpretation and point out that on the basis of the repealed provision with a similar purpose (Article 427 § 4 CPC in the version in force from 1 July 2015 to 14 April 2016[21]), the disposition of this provision referred separately to the allegation of failure by the court to take specific evidence in relation to the allegation of violation of the provisions concerning the court's activity in taking evidence. Such an interpretation is also supported by the literal interpretation of the quoted provision, from which it follows that the term "failure to take evidence of its own motion" cannot be understood as improper taking of evidence. Taking into account other interpretative directives, including the prohibition of a broad interpretation of exceptional provisions, it must be stated that, unlike the earlier regulations, the prohibition of raising objections refers only to defects in the sphere of admission, and not to the taking of evidence itself. In addition, there are doubts about the scope of the exception, including what is meant by the meaning of "relevant to the determination" of certain circumstances. D. Świecki points out that this reservation is normatively superfluous since it suggests the gradualness of the relevance of certain circumstances from the perspective of the admissibility of the request for evidence and the admissibility of the ground of appeal.[22] A different type of argument is put forward by S. Zabłocki, who argues that, firstly, it is impossible to create a standard for assessing the "materiality" of circumstances, and secondly, that it is difficult to imagine any circumstance concerning the indicated issues that would not be relevant to them.[23] Those views must be fully upheld, but that does not preclude the imprecise definition of the scope of the legislation in question.

[20] Idem, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, p. 72. D. Świecki points out *a contrario* that the exclusions from the prohibition of formulating appeals include "all shortcomings regarding the evidentiary basis of the judgment" and further that in this context, allegations of misconduct consisting in failure to admit evidence ex officio (Article 167 CPC) and incorrect taking evidence when this failure resulted in failure to clarify all the relevant circumstances of the case (Article 366 § 1 CPC).

[21] See Act of 20 February 2015 amending the Criminal Code and certain other acts (Journal of Laws 2015, item 396).

[22] D. Świecki, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, pp. 72–73.

[23] S. Zabłocki, *op. cit.*, p. 115.

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CONSEQUENCES OF INADMISSIBLE OBJECTIONS

1. Consistency of legal consequences

The key importance of the institution of inadmissibility of grounds of appeal is manifested at the level of legal consequences. Although the legislator in Article 378a § 4, Article 427 § 3a, Article 447 § 5 and Article 447 § 6 CPC provided for a prohibition or inadmissibility of bringing charges, there has been no change in any of the existing provisions of the CPC in the sphere of the legal consequences of filing such objections. The situation related to the assessment of the legal consequences of such objections is complicated by the provision of the CPC which does not oblige all parties to the proceedings to raise objections to the appeal (Article 427 § 2 CPC *a contrario*) or defines the grounds of appeal as the so-called movable component determining the limits of the examination of an appeal (Article 433 § 1 CPC).

The legal consequences of inadmissible grounds of appeal are not consistent with regard to the wording of Article 447 § 6 CPC. As a result of the provision in question, the way of removing the deficiencies indicated in the provision by way of an appeal is closed, and only the way of supplementing the judgment is left.[24] Refusal to accept or not considering such an appeal would be contrary to the wording of the last sentence of Article 447 § 6 CPC, and could also result in the entry into force of a ruling containing an error or not containing all relevant decisions.[25] Contrary to the inclusion of Article 447 § 6 CPC in the broader institution of inadmissible grounds of appeal, the consequences of raising such objections are different, because the purpose of this provision is not to exclude the possibility of correcting a ruling to the extent challenged by the allegations, but to do so, but in a manner other than appeal proceedings.

2. The stage of formal control of the appeal

The issue of inadmissibility of grounds of appeal is a new institution under the CPC. It is related to the broader issue of the admissibility of an appeal. At this point, it should be argued that there is currently no literal basis for declaring an appeal inadmissible on the grounds of inadmissibility.[26]

In the literature, the admissibility of an appeal is defined as the possibility provided by law to appeal against a given decision.[27] These conditions, i.e. the

[24] D. Świecki, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, pp. 352–353.

[25] S. Zabłocki, *op. cit.*, p. 585.

[26] D. Świecki, *Ograniczenie podstaw…*, p. 25.

[27] Z. Doda (*Dopuszczalność zażalenia w polskim procesie karnym*, Kraków 1982, p. 27) relates to the concept of the admissibility of a complaint which decisions may be subject to complaint

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type of decisions subject to appeal by a given appeal, are set out in Article 444 §§ 1 and 2 CPC in relation to appeals and Article 459 §§ 1 and 2 CPC in relation to complaints. The concept of admissibility of an appeal, or rather its opposite, i.e. the concept of inadmissibility, is a statutory term rooted in Article 429 § 1 *in fine* CPC. The inadmissibility of an appeal by operation of law is grounds for refusing to accept it or leaving it unexamined. With regard to all appeals in the CPC, the concept of inadmissibility is related to the lack of a right of appeal in relation to a given type of decision.

As has already been indicated, in the regulations set out in Article 378a § 4, Article 427 § 3a, Article 447 § 5 and Article 447 § 6 CPC the Criminal Procedure Act limits the possibility of raising certain grounds of appeal. Only in the case of Article 387a § 4 CPC the Act use the concept of inadmissibility. In other cases, it says that an objection may not be raised or that it cannot be the basis of an appeal, however without indicating what legal consequences are to be attached to the raising of such objection. The inconsistency referred to here can therefore be seen in the existence of grounds for refusal (Article 429 § 1 CPC) and the fact that an appeal based on inadmissible grounds of appeal were left unexamined (Article 430 § 1 CPC). These regulations use only the concept of an inadmissible remedy. In that context, the question therefore arises whether, on the basis of those provisions, it is possible to adopt a decision refusing to initiate an appeal or to leave it unexamined where the appeal is admissible but is based on inadmissible grounds of appeal. Two positions can be distinguished in this respect.

The first position disputes the existence of such a *de lege lata* basis. This view is undoubtedly in the minority.[28] It is based primarily on the literal wording of the grounds for refusing to accept[29] or leave an appeal unexamined, as well as on arguments of a systemic nature.[30] With regard to the cassation appeal, which is important from a comparative perspective, the conditions for its admissibility are set out in Article 519 and Article 521 §§ 1 and 2 CPC. A similar thesis should be put forward with regard to the institution of an appeal against a judgment of an appellate court specifying the grounds for an appeal in Article 539a § 3 CPC. The two issues discussed are clearly differentiated by Article 530 § 2 CPC, according to which the president of the court refuses to accept a cassation if the circumstances

review at all, and D. Świecki (*Konstrukcja apelacji jako środka odwoławczego w procesie karnym*, Warszawa 2017, p. 58) defines the admissibility of an appeal as the possibility of appealing against the judgment provided for by law.

[28] M. Gudowski, *Niedopuszczalne zarzuty apelacyjne a niedopuszczalność apelacji. Analiza krytyczna orzecznictwa i poglądów doktryny na tle art. 447 § 5 k.p.k.*, "Prokuratura i Prawo" 2019, no. 7–8, p. 181 ff.; M. Klonowski, *Glosa do postanowienia Sądu Najwyższego z 27 lipca 2017 r., IV KK 243/17*, "Palestra" 2018, no. 7–8, p. 139.

[29] M. Gudowski, *op. cit.*, pp. 187–188; M. Klonowski, *op. cit.*, pp. 139–140.

[30] M. Gudowski, *op. cit.*, pp. 189–191; M. Klonowski, *op. cit.*, p. 140.

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referred to in Article 429 § 1 CPC occur or if the cassation is based on reasons other than those indicated in Article 523 § 1 CPC. Article 531 § 1 CPC obliges the cassation to be left unexamined for the same reasons. This solution is also applied *mutatis mutandis* to the institution of an appeal against a judgment of an appellate court (Article 539f CPC in conjunction with Article 530 §§ 2 and 3 CPC and Article 531 CPC). It should be noted, however, that although in the legal language, i.e. under the legal act, the concept of inadmissibility of an appeal is separated from the concept of an appeal based on reasons other than those specified in the legal act (Article 530 § 2 CPC), in legal language, including theses expressed in the jurisprudence, basing an appeal on reasons other than those specified in the legal act (i.e. other, than admissible grounds) shall be determined to render the appeal inadmissible.[31]

The second view recognizes that there is a ground for refusing to accept or not considering an appeal based on inadmissible grounds of appeal. That position is based primarily on a functional interpretation, including the introduction of provisions. This view should be regarded as majority in legal scholars[32] and essentially unquestioned in the case law.[33] It should be noted that adopting a different view would *de facto* lead to giving the provisions defining cases of inadmissible grounds of appeal the status of *lex imperfecta*, which appears to be contrary to the principles of a rational legislator. This position is also supported by other arguments. According to the first of them, since the legislator obliged the procedural authorities to inform the party twice about the consequences in the form of limiting the possibility of challenging the decision, the inadmissibility of the appeal is a logical consequence of this.[34] The second argument refers directly to the intention of the legislator expressed in the explanatory memorandum to the bills introducing provisions on the issue of inadmissible grounds of appeal, the drafters of which emphasised the effect of the introduced provisions in the form of refusal to accept

[31] With regard to cassation, see decision of the Supreme Court of 23 October 2013, IV KZ 55/13, LEX no. 1412343, and with regard to complaints against the judgment of the Court of Appeal, see decision of the Supreme Court of 24 November 2020, II KZ 36/20, LEX no. 3088812.

[32] D. Świecki, *Ograniczenie podstaw…*, pp. 25–25; idem, *Apelacja obrońcy i pełnomocnika po zmianach*, [in:] *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, ed. P. Wiliński, Warszawa 2015, p. 444, 446; D. Świecki, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, pp. 289–290; A. Sakowicz, *Kodeks postępowania karnego. Komentarz*, Warszawa 2020, p. 1131; M.J. Szewczyk, *op. cit.*, p. 95; S. Zabłocki, *op. cit.*, p. 116, 581; J. Matras, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, Warszawa 2020, p. 1031.

[33] Cf. decision of the Court of Appeal in Krakow of 25 April 2017, II AKa 19/17, KZS 2017, no. 7–8, item 21; decision of the Court of Appeal in Wroclaw of 27 April 2016, II AKa 90/16, Legalis no. 1460421.

[34] D. Świecki (*Ograniczenie podstaw…*, p. 25) and M. Fingas (*op. cit.*, p. 607) this type of argument also draws in relation to the issue of limiting the examination of an appeal only to the types of shortcomings that may be the subject of admissible appeals.

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or leave without consideration the appeal. Such remarks were formulated, i.a., in the explanatory memorandum to the 2015 Amendment.[35] In legal literature, the term "inadmissible remedy" should also be understood as an appeal based solely on inadmissible grounds of appeal.[36] To sum up, although the first of the presented views cannot be denied to be completely unfounded,[37] a systemic and functional interpretation should be adopted, including one referring to the intentions of the legislator. The concept of inadmissibility of an appeal also extends to the issue of the inadmissibility of grounds of appeal. As a *de lege ferenda* application, it should be postulated that the wording of Article 429 § 1 CPC should be amended by adding the phrase "or was based on the reasons referred to in (…)" in its final part.

If an appeal is based solely on inadmissible grounds of appeal, it should be declared inadmissible at the stage of its formal review.[38] This means that after filing such an appeal pursuant to Article 429 § 1 CPC, the president of the court of first instance (or the head of a division or an authorised judge – Article 93 § 2 CPC) should refuse to accept it on the grounds that it is inadmissible by virtue of law. If an appeal containing such allegations is accepted and the appeal is sent to the appellate court, the court is obliged, pursuant to Article 430 § 1 CPC, to issue a decision not to consider such an appeal. The court is also empowered to issue such a procedural decision at the stage of substantive review of the appeal.[39]

If an appeal contains both inadmissible and admissible grounds of appeal, it should be accepted and heard within the scope of the admissible grounds of appeal.[40] Such a thesis is justified by the results of the functional interpretation of the provisions of the CPC concerning the limitation of admissibility in raising certain grounds of appeal.[41] Moreover, this position is confirmed by the intention of the legislator, expressed, i.a., in the explanatory memorandum to the draft amending the CPC.[42] Due to the principle of indivisibility of the appeal, it is not possible to refuse to accept or leave without considering the appeal in part, and this problem

[35] Sejm RP VII kadencji, Projekt ustawy o zmianie ustawy – Kodeks postępowania karnego, ustawy – Kodeks karny i niektórych innych ustaw wraz z uzasadnieniem, druk nr 870, https://orka.sejm.gov.pl/Druki7ka.nsf/0/96832B0ED113D8FBC1257AB4004F3B04/%24File/870.pdf (access: 21.10.2023), p. 96.

[36] J. Matras, *op. cit.*, p. 947; S. Zabłocki, *op. cit.*, p. 125; D. Świecki, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, p. 78.

[37] In this respect, as a result of in-depth research, the author changed his previously expressed position in: M. Klonowski, *op. cit.*, pp. 139–140.

[38] D. Świecki, *Ograniczenie podstaw…*, p. 25.

[39] S. Zabłocki, *op. cit.*, p. 146.

[40] D. Świecki, *Ograniczenie podstaw…*, p. 29; decision of the Supreme Court of 13 June 2017, V KK 480/16, OSNKW 2017, no. 9, item 55; S. Zabłocki, *op. cit.*, p. 582.

[41] D. Świecki, *Ograniczenie podstaw…*, p. 25.

[42] M. Fingas, *op. cit.*, p. 604.

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is resolved at the level of the scope of the case by issuing a decision to consider the case in the scope of the admissible objections only.[43]

3. The stage of substantive review of the appeal

Finally, it is necessary to address the last problem relating to the institution of inadmissible grounds of appeal – the question of how an appeal without objections is decided in appeal proceedings. At this point, it should be noted that pursuant to Article 427 § 2 CPC, the so-called professional entities are obliged to formulate objections against the decision. Such an obligation *a contrario* does not apply to the so-called private entities, i.e. non-professional participants in the trial (in particular the defendant and the auxiliary prosecutor). Since, with respect to the entities listed in Article 427 § 2 CPC, the formulation of objection is a formal requirement of an appeal, an appeal without objections should not be accepted or should be left unexamined. In the course of the review initiated by such entities, the appeal must contain objections, and therefore it is possible to examine them from the perspective of inadmissible grounds of appeal. Then the limits of the examination of the case (Article 433 § 1 CPC) are determined by the admissible grounds of appeal. On the other hand, in the case of so-called private entities, since the appeal does not have to contain objections, it may happen that it lacks an element that can be assessed from the perspective of inadmissibility and, furthermore, an element that sets the limits of the consideration of the case in appeal proceedings. The objections in law are therefore a movable element which delineates the boundaries of the examination of the case on appeal, since they mark those limits when they are actually made.

Undoubtedly, under the applicable provisions of the CPC, a situation may arise in which an entity other than those listed in Article 427 § 2 CPC files an appeal without objections. In the absence of a substratum for the assessment, it is impossible to examine it through the prism of its inclusion of inadmissible grounds of appeal. At the same time, it should be noted that in connection with the model changes, primarily with regard to the wording of Article 427 § 2 CPC, the appellate court is obliged to carry out the so-called total appellate review in the case of appeals that do not contain objections. In that context, the question arises as to whether that court should also do so in respect of such defects which could not be the subject of admissible grounds of appeal. The answer to this question should be negative. There are a number of arguments in favour of such a thesis, but two key ones should be pointed out. The first of these relates to model issues. In such a case, the model of appeal proceedings would be differentiated solely from the perspective of whether or not charges have been brought. For example, in multi-party cases,

[43] D. Świecki, *Ograniczenie podstaw…*, p. 2; M.J. Szewczyk, *op. cit.*, p. 95; decision of the Supreme Court of 13 June 2017, V KK 480/16, OSNKW 2017, no. 9, item 55.

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in which the court adjudicated on the basis of consensual procedures, the appellate court, when considering the appeal of two defendants, in the case of one defendant, would consider it only within the scope of admissible objections (if it also raised inadmissible objections), and in the case of the other, which did not raise any objections at all – within the scope of all the infringements specified in Article 438 CPC. Such an interpretation would be contrary to the principle of equality in the elementary sense. The second argument relates to the potential instrumentalisation of the grounds of appeal. This would lead to a phenomenon that is unfavourable from the point of view of the principle of appeals, namely the procedural profitability of lodging an appeal without a key element, i.e. why the applicant considers the judgment to be incorrect.

If the grounds of appeal are not formulated in the content of the appeal, the decision is subject to review on the basis of admissible grounds of appeal and, to a broader extent, only on the basis of regulations obliging the case to be considered outside the limits of the appeal and the objections raised.[44] In such situations, appellate review is limited to only those groups of deficiencies which could have been the subject of admissible grounds of appeal.[45] This view seems to be dominant in the doctrine, which also indicates that there is a certain petrification of the decisions.[46] It should be noted, however, that the consequence of such a view is that the scope of the appellate court's consideration is limited with respect to certain relative grounds of appeal. Such a court is entitled to intervene with respect to the relative grounds of appeal to which inadmissible grounds of appeal could relate only under the conditions of Article 440 CPC, i.e. when the infringement is characterized by a certain obviousness, vividness, and, moreover, with the reservation that the ruling may be amended in the direction indicated in that provision or set aside and remand it for re-examination if the conditions set out in Article 437 § 2 sentence 2, *in fine*, are fulfilled. The literature indicates that a possible correction of a ruling based on inadmissible grounds of appeal may be achieved by treating inadmissible grounds of appeal as guidelines for the appellate court to issue a ruling under Article 440 CPC.[47] Such a thesis can be accepted, but only in a situation where the appeal contains any admissible grounds of appeal, as this is a condition the appeal for substantive consideration, which only initiates the appeal proceedings. The legal

[44] D. Świecki, *Ograniczenie podstaw…*, p. 28; idem, [in:] *Kodeks postępowania karnego. Komentarz*, vol. 2, p. 103, 290; M. Fingas, *op. cit.*, pp. 607–608.

[45] M.J. Szewczyk, *op. cit.*, p. 95.

[46] S. Zabłocki, *op. cit.*, p. 584.

[47] K. Szczęsny, *Zaskarżalność wyroków wydanych w ramach porozumień procesowych – wybrane aspekty*, "Białostockie Studia Prawnicze" 2018, no. 1, p. 218. However, this view seems difficult to apply in practice due to the formal nature of the assessment of the admissibility of the appeal and, at the same time, the evaluative and substantive premises for applying the institution under Article 440 CPC.

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doctrine also argues that appeals without grounds of appeal should be carefully analysed in order to search for the actual grounds for the appeal in the context of the specific scope of the appeal and the appeals, and the appellate court is entitled to analyse the admissibility of the appeal also from the perspective of the formulated conclusion.[48] If the appeal is based solely on admissible pleas, taking into account Article 440 CPC may necessitate the court of appeal to review the judgment also with respect to such defects which could not have been raised by the party, and which may indicate that the judgment would be upheld, due to the occurrence of one of the relative grounds of appeal under Article 447 § 5 CPC grossly unfair.[49]

CONCLUSIONS

The institution of inadmissible grounds of appeal is important for the shape of the appeal proceedings. This is primarily due to the fact that the consequence of this institution is the lack of substantive consideration of the appeal in its entirety or in the scope of the inadmissible grounds of appeal. A direct consequence of the construction in question is therefore that the applicant is deprived of the right to review the decision to a certain extent, and it is up to the legislature to determine the extent of that review. As can be seen from both the repealed and the existing regulations, this scope can be quite broad. The conducted research provides the basis for confirming the thesis that the provisions regulating cases of inadmissible grounds of appeal have been formulated incorrectly from the legislative point of view and require them to be based on a uniform conceptual framework. Moreover, the catalogues of inadmissible grounds of appeal are not precisely defined, which gives rise to doubts of interpretation when interpreting all the provisions regulating this institution. Although the actual content of the allegations should be verified when examining them, it is necessary to postulate the application of the principle of *exceptiones non sunt extendendae* and a strict interpretation of the catalogues resulting from these provisions, in particular when the appeal is filed in favour of the accused. Moreover, under the applicable law, there is no clearly defined basis for refusing to accept or leave unexamined an appeal based solely on such allegations.

In view of the above, a change in the wording of Article 429 § 1 CPC has been proposed as *de lege ferenda* motions. Consideration should also be given to legislative amendments clearly specifying that in the case of appeals which do not contain grounds for consideration of the case, in the case of a total review, there are only infringements that may be the subject of admissible grounds of appeal. The institution of inadmissible grounds of appeal has great potential, and the defi-

[48] D. Świecki, *Ograniczenie podstaw…*, p. 28.
[49] Cf. S. Zabłocki, *op. cit.*, p. 583.

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nition of a catalogue of such grounds should always take into account the fact that such action will lead to a restriction of the right to review judgments of criminal courts. The introduction of some cases of inadmissible appeals (in particular those related to the lack of evidence initiative or those related to consensual judgments) was related to the remodeling of the criminal process into a model with more adversarial elements. In connection with the return to the model with the dominance of inquisitorial solutions, it would be necessary to consider the coherence of the catalogue of inadmissible appeal allegations with the current model of the process.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy. Analizowanym zagadnieniem jest instytucja niedopuszczalnych zarzutów odwoławczych określonych w art. 378a § 4, art. 427 § 3a, art. 447 § 5 i art. 447 § 6 k.p.k. Podjęcie tego problemu badawczego uzasadnione jest licznymi problemami związanymi z wykładnią przepisów normujących tę instytucję oraz konsekwencjami prawnymi postawienia w środkach odwoławczych niedopuszczalnych zarzutów odwoławczych. Ponadto zasadność przeprowadzenia badań wynika z konstytucyjnych i konwencyjnych konsekwencji obowiązywania tej

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instytucji. Dotychczas problematyka ta nie doczekała się kompleksowej analizy. Postawiono tezę, że przepisy normujące niedopuszczalne zarzuty odwoławcze zostały niepoprawnie sformułowane, a katalogi obejmujące takie zarzuty nie są ściśle określone. Następnie postawiono tezę, że Kodeks postępowania karnego nie wyraża wprost konsekwencji postawienia takich zarzutów, co wymusza funkcjonalną wykładnię przepisów Kodeksu postępowania karnego. W efekcie rozważań sformułowano wnioski *de lege ferenda*. Zaprezentowane badania mają znaczenie dla dogmatyki prawa karnego procesowego oraz praktyki stosowania omawianych przepisów.

Słowa kluczowe: zarzuty odwoławcze; apelacja; postępowanie odwoławcze; postępowanie karne; tryby konsensualne

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