

**Krzysztof Kułak**

**Summary of the doctoral dissertation entitled:**

**"Complaint in preparatory proceedings in the Polish criminal trial"**

The subject of the presented doctoral dissertation concerns the issue of a complaint submitted at the stage of preparatory proceedings in a criminal trial. It was prepared at the Department of Criminal Procedure at the Maria Curie-Skłodowskiej University in Lublin under the direct supervision and care of Prof. UMCS dr hab. Ireneusza Nowikowskiego.

There were several reasons for choosing this issue. First of all, it should be noted that the matter in question does not have current, comprehensive scientific studies. It is true that the literature on the criminal trial sometimes raises the issue of complaints filed at the pre-trial stage, but most often they are articles and very selective. The only publications concerning the entire institution of complaints in a criminal trial come from the 1980s. They were drawn up on the basis of the previously binding Code of Criminal Procedure and therefore many of the elements presented at that time are no longer valid. Therefore, this work is an attempt to fill a certain gap in the literature on the criminal trial. The second reason for the selection of the discussed issue were also certain legislative changes concerning the submission of a complaint at the stage of preparatory proceedings. In 2007, the legislator significantly changed the nature of this institution. This amendment required more extensive discussion. These issues are also related to the mutual functioning of appellate control in preparatory proceedings with professional and procedural supervision among law enforcement agencies. It is difficult to reconcile these institutions with each other. The last motive for undertaking the work in question was to emphasize the important role of the complaint in the preparatory proceedings. It is obvious that at the stage of investigation or inquiry, there is often a deep interference with human and civil rights and freedoms. A complaint is usually at this stage the only

means of protecting the party from the actions of law enforcement agencies. It is important to build this protection in a rational and proper way.

In order to meet the above goals, this work has been prepared in such a way as to comprehensively discuss the problems presented. It should be noted that the subject of the submitted study is, in principle, the issue of a complaint in the preparatory proceedings as a typically procedural institution. On the other hand, the issue of a complaint that may occur outside of a formal investigation or inquiry is omitted. It is mainly about the issue of the so-called operational or out-of-trial complaints. It is such a vast matter that it may be the subject of a separate study.

This work is divided into eight chapters. Their chronology is related to the typical course of filing and examining a complaint in preparatory proceedings.

The complaint is one of the manifestations of the appeal control principle. Therefore, the first chapter of this work discusses the above principle from the point of view of how it is perceived in the literature on the subject. Not all representatives of the doctrine see the need to distinguish the discussed institution separately. Therefore, in the initial part of the work, the whole spectrum of different views of the literature on the principle of appeal control is presented. On the other hand, the indicated issue is not only a topic of interest for representatives of the doctrine, but also an element of jurisprudence, especially of the Constitutional Tribunal and the European Court of Human Rights in Strasbourg. The first chapter presents in detail the judicature of these adjudicating bodies on the principle of appeals control. The direction in which it is going is also indicated.

The second chapter is also introductory. It explains the concept of means of appeal, their division and the way they are shaped in individual codes of criminal procedure. Together with this, the issues of different models of pre-trial investigation are briefly presented. Complaints are not the only means of appeal in criminal procedure, therefore it was indispensable to present this institution in a legal and comparative way with other means of appeal.

The next chapter already partially concerns the proper matter for recognizing complaints at the stage of preparatory proceedings. It presents the current instance structure of the complaint examination bodies and the functioning of the courts and

prosecutor's offices. Some basic differences in the examination of a complaint in the preparatory proceedings by the court and by the prosecutor are also mentioned.

In turn, the fourth chapter discusses the issues of the subjective scope and the subject matter of the complaint. It is therefore a question of explaining which provisions, orders or actions may be appealed against and to whom exactly. These considerations are preceded by general remarks on procedural activities. On the other hand, Article 302 of the Code of Criminal Procedure is discussed in detail.

Chapter five is entitled "interinstitutional proceedings in connection with the lodging of a complaint in the preparatory proceedings". It discusses all the elements related to the lodging of a complaint and its transfer to the appeal body for examination. It is precisely about presenting the issue of deadlines for lodging a complaint, its formal requirements, the *gravamen* institution, cases of filing a complaint to the wrong authority, etc. Separate sections describe the activities carried out by the subject of first and second instance when this appeal is received.

All of the above steps occur whenever a complaint is lodged. Sometimes, however, there may be certain institutions that will be closely related to your complaint. It concerns such issues as resetting the deadline, submitting a response to the complaint, making a decision on the withdrawn complaint, excluding the authority from examining the appeal, accepting the appeal *ex officio*, or suspending the execution of the appealed decision. A characteristic feature of all these elements is that they do not always accompany the complaint. Consequently, they are presented in a separate - sixth - chapter.

After the complaint is properly submitted, it is examined on the merits. In this regard, the appellate body may take various procedural decisions. Chapter seven accompanies this problem. Additionally, it discusses the issue of the legality of decisions in the preparatory proceedings, in particular the legality of decisions on preventive measures. The issue of the so-called consumption of a public complaint and the revocation and amendment of the procedural decision in the preparatory proceedings outside the control of the appeal is presented in detail.

The last chapter deals with the issues of extremely important but at the same time difficult and inconsistently perceived issues in the appeal proceedings. Of course,

it is about discussing the limits of appeal control, determining their components and indicating when these limits may be exceeded. These issues are closely related to the prohibition of *reformationis in peius* and the problem of the so-called total appeal control.

The whole work is crowned with an ending and a bibliography.

Even a brief presentation of the above issues indicates that this work consists of two parts concerning the complaint at the stage of the preparatory proceedings.

The first element refers to typically procedural issues, i.e. related to the lodging of this appeal, examining its admissibility, referring it to the second instance and examining it. So these are the issues that are most often associated with the institution of complaint. A scrupulous examination of all these elements revealed many mistakes made by the legislator. They are sometimes very serious, substantive, and sometimes typically stylistic. Their joint and short listing is presented at the end of this dissertation.

The second part, on the other hand, refers to the relation of this appeal to other issues that arise only at the stage of preparatory proceedings. This is precisely about the issues of procedural and service supervision in the organizational structure of prosecutor's offices and other law enforcement agencies. When raising the subject of a complaint in the preparatory proceedings, the question immediately arises whether the prosecutor may simultaneously exercise procedural supervision over other entities authorized to conduct an investigation or inquiry, and at the same time recognize submitted complaints against their decisions. Thus, the conflict of such values, i.e. the right to appeal control and the supervision in force among the authorities of preparatory proceedings, is very visible. This dissertation tries to work out some solutions to eliminate these contradictions. Finally, the postulates are also addressed to the legislator.

A complaint, no matter at what stage of the process is filed, should not be a fictitious or cloaked institution. Indeed, the purpose of introducing such appeals into the Code of Criminal Procedure is not to merely adorn them. A complaint should fulfill certain functions. However, for this to happen, it must be structured in a specific way and regulated in the relevant regulations. It seems, however, that the recognition

of this measure at the stage of preparatory proceedings by a non-judicial body (e.g. a prosecutor) often means that it does not fulfill its basic function. Sometimes it is a remedy given by the legislator to the participants of the process, which they can use, but it rarely leads to the elimination of some, even real, emerging irregularities. Therefore, the question may arise as to what this measure is supposed to do in such a case. It is important to build the institution of a complaint in such a way that it is a rational, reliable institution, and not a fictional or façade institution. Currently, some types of complaints examined by the bodies of preparatory proceedings do not meet these demands. Therefore, some ideas and initiatives are presented to the legislator so that the complaint in the preparatory proceedings played its proper role.



*Krzysztof Kulak*