

# Grounds for suspending the execution of a sentence under Article 15 of the Executive Penal Code: Selected issues and case law

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## Abstract

This article addresses the issue of the grounds for suspending the execution of a sentence pursuant to Article 15 of the Executive Penal Code, taking into account selected issues of doctrine and case law. It is a contribution to a deeper analysis of the institution of suspending the execution of a sentence.

**Keywords:** suspending the execution of a sentence, Executive Penal Code.

Enforcement proceedings are exceptionally dynamic, and any changes that occur during the enforcement of judgments should be reflected in the content of the decisions issued. The direction of said proceedings can

be influenced by executive bodies specified in Article 2 of the Executive Penal Code (EPC) as well as both parties. This influence may also be shaped by external factors and those completely beyond the control of the authorities or parties to the proceedings, such as the death of the convicted person. Consequently, the impact of these factors may not only lead to a change in the originally specified direction of enforcement proceedings, but also result in their temporary suspension or even termination without achieving the set goals.<sup>1</sup>

In enforcement proceedings, there are several incidental proceedings that modify the original manner of enforcing the judgment. Among them, special attention should be paid—in the context of the considerations undertaken in this study—to the autonomous institution of suspension of enforcement proceedings, regulated in Article 15 § 2 of the EPC. According to the aforementioned provision, if there is a long-term obstacle preventing enforcement proceedings, and in particular if the convicted person cannot be apprehended or the judgment cannot be executed due to mental illness or other chronic, serious illness, the proceedings are suspended in whole or in part for the duration of the obstacle's persistence.<sup>2</sup>

The suspension of enforcement proceedings consists of pausing their course for the period determined by the persistence of the obstacle referred to in Article 15 § 2 of the EPC.<sup>3</sup>

The provision quoted by the authors of the study, seemingly clear and unambiguous, in practice poses many difficulties in its interpretation. The institution itself is one of those that are often the subject of judgments by higher courts. The justification for this situation is, on the one hand, the importance of the titular institution against other solutions provided for by the legislator in the EPC and, on the other hand, the accumulation of legally unspecified clauses in the provision, which give rise to doubts in court practice and discrepancies in the case law of lower courts.

The nature of the titular institution means that a precise and relatively permanent definition of its individual components through legal

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<sup>1</sup> R. Seweryn, "O niektórych aspektach zawieszenia postępowania wykonawczego," *Prokuratura i Prawo* 9, 2021, p. 70.

<sup>2</sup> Act of 6 June 1997, The Executive Penal Code, *Journal of Laws* of 2024, item 706.

<sup>3</sup> Court of Appeal in Lublin, Decision of 28 December 2005, II AKzw 876/05, KZS 2007.

provisions is practically unattainable. For this reason, it should be expected that the judiciary will continue to be an extremely important factor that will enable a detailed interpretation of the legal norms contained in the EPC. Thus, it will not only facilitate the work of enforcement bodies and professional legal representatives but will also guarantee the lawful and legal execution of the sentence against the convicted person.

Below, we will present the most interesting theses from the justifications of the judgments of the Supreme Court and the courts of appeal, which have a real impact on the direction of case law in the common courts of our country in the area of executive criminal law.

In accordance with Article 9 of the EPC, the basic positive premise determining the possibility of initiating and conducting enforcement proceedings is the enforceability of the judgment. The reasons for which enforcement proceedings cannot be conducted may be of a permanent or long-term but temporary nature. The institutions of discontinuation and suspension of proceedings specified in Article 15 of the EPC sanction the above situations.

Suspension of enforcement proceedings consists of pausing their course for the period determined by the persistence of the obstacle referred to in the provision of Article 15 § 2 of the EPC, which means that without proper resumption, there is no basis for the court, including the penitentiary court, to initiate procedural actions other than those aimed at resuming such proceedings.<sup>4</sup>

The proceedings on discontinuation or suspension of enforcement proceedings may be initiated at the request of the convicted person, his defence counsel, the prosecutor or *ex officio* (Article 19 § 1 of the EPC). It should be noted that a professional court probation officer does not have the right to submit such an application, and any “application” from a probation officer or other unauthorized entity in this matter may be treated only as a signal to initiate *ex officio* incidental proceedings.<sup>5</sup> The court competent to issue such a procedural decision (in the form of a resolution) is the court specified in Article 3 § 1 of the EPC.

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<sup>4</sup> Ibid.

<sup>5</sup> K. Postulski, “Umorzenie i zawieszenie postępowania wykonawczego,” *Prokuratura i Prawo* 7–8, 2011, p. 92.

In accordance with the wording of Article 15 § 2 of the EPC,<sup>6</sup> if there is a long-term obstacle preventing enforcement proceedings, particularly if the convicted person cannot be apprehended or the judgment cannot be executed against him due to mental illness or other chronic, serious illness, the proceedings shall be suspended in whole or in part for the period in which the obstacle persists. Therefore, the suspension of proceedings may concern the entire enforcement proceedings, part of the enforcement proceedings concerning individual penalties or penal measures, or incidental proceedings pending at the stage of enforcement proceedings. The suspension of enforcement proceedings does not suspend the limitation period, unless the convicted person evades the execution of the sentence, while the suspension of the limitation period cannot exceed ten years (Article 15 § 3 of the EPC). When analysing the provision in question, it should be noted that the grounds for suspension are the impossibility of apprehending the convicted person and the impossibility of enforcing the judgment against the convicted person due to mental illness or other chronic serious illness.<sup>7</sup> However, the list of reasons for suspending enforcement proceedings in Article 15 § 2 of the EPC is not exhaustive, which is clearly indicated by the phrase “in particular.”<sup>8</sup> In any other case constituting an obstacle to conducting enforcement

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<sup>6</sup> The content of the provision is consistent with Article 22 § 1 of the Code of Criminal Procedure, which refers to the suspension of criminal proceedings. In addition, Article 17a § 2 of the Code of Criminal Procedure provides another basis for the suspension of enforcement proceedings: if the obstacles to the immediate execution of the penalty of imprisonment cease to exist, the court—regardless of whether the penalty of restriction of liberty has already been fully executed—shall suspend the enforcement proceedings concerning the penalty of restriction of liberty and immediately refer the penalty of imprisonment for execution.

<sup>7</sup> The grounds for suspending enforcement proceedings specified in this provision are identical to those provided for in Article 22 § 1 of the Code of Criminal Procedure. This means that the latter provision does not apply to enforcement proceedings (Article 1 § 2 of the EPC).

<sup>8</sup> For example, it should be noted that the suspension of enforcement proceedings under Article 15 § 2 of the EPC is permissible when the court, under Article 3 of the Act of 1 August 1997 on the Constitutional Tribunal, submits to the Constitutional Tribunal a question of law as to the conformity of a normative act with the Constitution, ratified international agreements or an act, if the resolution of a given case depends on the answer to the question.

proceedings, the court is obliged to determine whether it may be considered a long-term obstacle as referred to in this provision.

It follows clearly from the content of Article 15 § 2 of the Criminal Code that the stay of proceedings does not occur by operation of law (*ipso iure*), but always requires a procedural decision by a functionally competent court. There must be a cause-and-effect relationship between the long-term obstacle and the impossibility of conducting enforcement proceedings. The suspension of enforcement proceedings results in a stay of these proceedings but does not foul them up. During the period of suspension, the court is obliged to periodically check, in accordance with Article 14 § 1 of the EPC, whether the reasons for suspending the proceedings have ceased to exist. After the obstacle has been removed, the court issues a decision to resume the proceedings.<sup>9</sup>

Referring to the first premise referred to in the commented provision, i.e., the impossibility of apprehending the convicted person, it should be pointed out that in accordance with § 347 of the Rules of Procedure of Common Courts,<sup>10</sup> before suspending proceedings due to the impossibility of apprehending the accused or before issuing a decision to search for the accused under a wanted notice, all possibilities of establishing his address should be exhausted, including using available databases, and it should be established whether the accused is not in a detention centre or a prison, and if the actions taken prove ineffective, the appropriate police unit should be contacted with an order to initiate a search. If a decision is issued to search for the accused under an arrest warrant, the court may waive the search.

In the above context, it should be noted that if the convicted person's evasion of the sentence takes the form of hiding, the court may issue a decision to search for him by issuing an arrest warrant (Article 279 § 1 of the Code of Criminal Procedure in connection with Article 1 § 2 of the EPC). The provisions on the European Arrest Warrant also apply to these proceedings. These forms of searching for the convicted person usually justify the assumption of the existence of a long-term obstacle preventing

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<sup>9</sup> See K. Postulski, "Umorzenie i zawieszenie..." p. 113.

<sup>10</sup> Regulation of the Minister of Justice of 18 June 2019, Rules of Procedure of the Common Courts, Journal of Laws of 2024, item 867.

the enforcement proceedings, which obliges the court to suspend the enforcement proceedings.<sup>11</sup>

The Supreme Court has repeatedly commented on the issue of the impossibility of apprehending a convict, assuming that while a long-term stay abroad alone cannot be considered as an impossibility of apprehending a convict, such a situation may be assessed as a long-term obstacle preventing enforcement proceedings and may be a basis for staying the proceedings. The literature rightly emphasizes that the circumstances and reasons for the prisoner's departure should be examined each time, especially when assessing his conduct in the perspective of serving his sentence.<sup>12</sup>

Other grounds for suspending enforcement proceedings specified in the Act, i.e., mental illness and another serious, chronic illness, are related to the impossibility of enforcing the judgment against the convicted person. The impossibility of enforcing a judgment against a convicted person due to his health condition is then treated as a long-term obstacle preventing enforcement proceedings.

If circumstances relating to the health of the convicted person which constitute an obstacle to the execution of the sentence are revealed, the proceedings regarding a possible suspension of the execution of the sentence are initiated by the court *ex officio*. The convicted person and his or her defence counsel may file an appropriate motion in this respect or notify the court of the existence of such a reason. The case law indicates that in the case of suspension of enforcement proceedings pursuant to Article 15 § 2 of the EPC, by its nature this decision is temporary and is subject to change *ex officio* if new facts emerge, e.g. concerning the health of the convicted person, making it impossible or, conversely, enabling the serving of the sentence. In this instance (as in the case of e.g. conditional early release) it is not necessary for the convicted person to be active or for him to meet specific (additional) conditions. The commented article also does not provide for any time limit in relation to the reconsideration of the issue of an obstacle to the execution of the sentence.<sup>13</sup>

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<sup>11</sup> K. Postulski, "Umorzenie i zawieszenie...", p. 93.

<sup>12</sup> More on that in the Resolution of the Supreme Court of 12 December 1995, KZP I 35/95.

<sup>13</sup> Supreme Court, Criminal Chamber, Decision of 6 September 2018, III KO 76/18.

The concept of mental illness is general, and it is not possible to create a catalogue of these illnesses, but the illness must be chronic and severe. A somatic illness must have the same characteristics. The doctrine and case law indicate that a mental illness during the proceedings constitutes grounds for suspending them if it prevents participation in the proceedings, i.e., when, despite the participation of a defence lawyer, the convicted person is unable to independently direct the defence during the proceedings, i.e., properly understand the meaning of procedural acts and make sensible statements.<sup>14</sup> There must be a connection between a mental illness within the meaning of this provision and the impossibility of enforcing the decision. This premise is specified when the convicted person is unable to execute the sentence and other measures imposed on him due to his mental health condition and thus the judgment cannot be executed.<sup>15</sup>

Suspension of enforcement proceedings due to illness may take place in a situation where a serious illness acquires the characteristics of a chronic disease that is difficult to treat in conditions of penitentiary isolation.<sup>16</sup> The Supreme Court expressed the view that such impairment of bodily functions should last longer than 6 months. This period, according to the Supreme Court, semantically corresponds to the concept of long-term.<sup>17</sup> A long-term serious illness is a significant disruption of the body's functioning that prevents or significantly limits the patient's ability to perform normal life activities. Said illness however can be cured after a long-term therapy process, whereby a period of about six months is assumed.<sup>18</sup> In another Supreme Court ruling, we also read that a severe impairment of the normal functioning of the body or its parts for a period exceeding six months constitutes a long-term illness.<sup>19</sup>

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<sup>14</sup> More on this topic in Supreme Court, Ruling of 18 May 1979, IV KR 92/79.

<sup>15</sup> R. Seweryn, "O niektórych aspektach..." p. 75.

<sup>16</sup> K. Postulski, "Stan zdrowia skazanego w aspekcie zdolności do odbywania kary pozbawienia wolności," *Prokuratura i Prawo* 7–8, 2015, p. 167.

<sup>17</sup> Supreme Court, Judgment of 13 February 1976, V KR 274/75, LEX no. 63911; Supreme Court, Judgment of 6 July 1972, Rw 612/72; *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1, 1973, p. 324; LEX no. 21498.

<sup>18</sup> *Ibid.*

<sup>19</sup> Supreme Court, Judgment of 6 July 1972, Rw 612/72.

The suspension of enforcement proceedings results in a stay of these proceedings, but does not put paid to them, because the removal of the obstacle obliges the court to immediately resume the proceedings,<sup>20</sup> therefore, there is only a shift in time of the execution of the penalty. The boundary ending the period of suspension of enforcement proceedings due to “another chronic, serious illness” is the “cessation of the obstacle,” which should be identified not with complete recovery (cessation of the illness), but with the mitigation of the severity of its symptoms and course to a state that no longer justifies recognizing the illness as an obstacle to the execution of the custodial penalty.<sup>21</sup>

The current provisions of the EPC do not provide for any time limit for suspending enforcement proceedings due to another chronic, serious illness. It is the “cessation of the obstacle,” which should be identified not with complete recovery, but with the mitigation of the severity of its symptoms and course to a state that no longer justifies recognizing this illness as an obstacle to the execution of the sentence of imprisonment.<sup>22</sup> In such a case, the relevant procedural body is obliged to immediately initiate proceedings in the given case.

In the context of the premise concerning the health of the convicted person, which is a condition for the suspension of enforcement proceedings, it cannot be forgotten that the convicted person is provided with medical care in prison conditions. Moreover, in accordance with Article 115 § 6 of the EPC, in particularly justified cases, the director of a prison, after seeking the opinion of the prison doctor, may allow the convict, at his expense, to be treated by another doctor of his choice, from an entity other than the one indicated in § 4, and to use additional medicines and other medical products.

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<sup>20</sup> Supreme Court, Resolution of 19 April 2000, I KZP 8/00.

<sup>21</sup> Court of Appeal in Rzeszów, 2nd Criminal Division, Decision of 1 October 2013, II AKzw 572/13.

<sup>22</sup> The Court of Appeal in Kraków, in its decision of 25 January 2006, II AKzw 827/05, KZS 2006/2/44, indicated that “even a long-term or even chronic illness does not provide grounds for suspending the proceedings, provided that it can be treated in conditions of imprisonment, possibly in a prison hospital. It must be an illness that prevents the convict from being placed in a penitentiary due to a threat to life or causing a serious risk to the convict’s health.”



The institution of suspending enforcement proceedings due to health reasons on the part of the convicted person applies in situations in which it is not possible to execute a judgment against the convicted person. This is a premise broader in scope than the premises for applying the institution of postponing the execution of a sentence or a break in the sentence. They refer solely to the penalty imposed on the convicted person, and not to the judgment as a whole, and therefore their scope in terms of subject matter is narrower. The suspension of enforcement proceedings is an exceptional institution, used in a situation where it is not possible to conduct the proceedings. Therefore, the suspension of enforcement proceedings due to the health condition of the convicted person is justified only when the already applied institutions of a break in the sentence or postponement of the execution of the sentence have not brought about a change in the health situation of the convicted person to an extent justifying the execution of the sentence imposed on him.<sup>23</sup>

It should be assumed that the boundary between “serious illness” (Article 150 of the EPC) and “chronic serious illness” (Article 15 § 2 of the EPC) ends is fluid. This means that no earlier than after 6 months of a serious illness, the court may recognize it as chronic with the consequences specified in Article 15 § 2 of the EPC. The court should, however, consider it a long-term obstacle to the execution of the sentence and suspend the enforcement proceedings if the serious illness lasts for more than a year in the absence of such prognosis. Suspension of enforcement proceedings concerning custodial sentences due to serious illness may therefore only occur if there is no prospect of this obstacle to serving the sentence ceasing within a foreseeable period. It must be an illness that prevents the prisoner from being placed in a prison with life-threatening conditions or has caused it to be impossible for the prisoner’s health.<sup>24</sup>

The European Court of Human Rights has repeatedly commented on the issue of suspending enforcement proceedings due to the health condition of the convicted person, indicating that a sick person serving a sentence must be placed in conditions that ensure the protection of his or her health, taking into account the generally known and justified limitations

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<sup>23</sup> See also R. Seweryn, “O niektórych aspektach...,” p. 76.

<sup>24</sup> K. Postulski, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2017, pp. 156–157.

related to detention. However, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>25</sup> cannot be interpreted as establishing a general obligation to release a person from prison on health grounds or to transfer him to a regular hospital, even if he suffers from an illness that is particularly difficult to treat. The Tribunal accepts that the quality of medical care in prison may sometimes differ from the medical care offered in public health care facilities. Nevertheless, Article 3 of the Convention imposes on the State an obligation to protect the physical integrity of persons deprived of their liberty, in particular by providing them with appropriate medical care. The Tribunal considers that when a court decides to place a sick person in a prison, it must check with particular care whether the conditions of serving the sentence are reconciled with the special needs of the sick person.<sup>26</sup>

In the above context, it is worth adding that even a long-term or even chronic illness does not constitute grounds for suspending the proceedings, as long as it can be treated in conditions of imprisonment, or possibly in a prison hospital. It must be a disease that prevents the prisoner from being placed in prison due to a threat to life or causing a serious risk to the prisoner's health.<sup>27</sup> Suspension of enforcement proceedings concerning a prison sentence due to a serious illness may only occur if there is no prospect of cessation of this obstacle to serving the sentence within a foreseeable time.<sup>28</sup>

It should also be borne in mind that the limitation period is suspended in the event of suspension of enforcement proceedings only if the suspension was caused by the convicted person's evasion of the execution of the sentence, and the period of suspension of the limitation period may not exceed ten years (Article 15 § 3 of the EPC). It should be noted that the impossibility of apprehending the convicted person, which is a premise for suspending the enforcement proceedings, does not necessarily mean

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<sup>25</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, subsequently amended by Protocols nos. 3, 5 and 8 and supplemented with Protocol no. 2 (Journal of Laws of 1993, no. 61, item 284).

<sup>26</sup> European Court of Human Rights, Judgment of 27 July 2010, case 15952/09.

<sup>27</sup> See Decision of the Court of Appeal in Kraków of 25 January 2006, II AKzw 827/05.

<sup>28</sup> K. Postulski, "Stan zdrowia skazanego..." p. 153.

that the convicted person is avoiding the execution of the sentence, and may be caused by other reasons. As already mentioned, the stay of a convicted person abroad for a longer period of time may confirm the existence of a long-term obstacle preventing enforcement proceedings, but it does not have to be tantamount to evading the execution of the sentence. The circumstances and reasons for a convicted person's departure abroad must be determined from the perspective of the motives behind his conduct, especially as regards the connection with the prospect of serving a sentence.<sup>29</sup>

If it is found that the convicted person is evading the execution of the sentence, which as a result resulted in the suspension of the proceedings, the period of suspension of the limitation period may not exceed ten years. The Supreme Court has repeatedly commented on the issue of suspending the running of the limitation period. The decision of the Supreme Court of 12 October 2010 is worthy of attention<sup>30</sup>—said decision states the following: “in a situation where the convicted person did not return from his leave in prison and hid from law enforcement and judicial authorities, which resulted in the issuance of an arrest warrant against him and then a European Arrest Warrant, it is fully justified to state that all the conditions on which the suspension of the limitation period for the execution of the sentence is dependent have been met.”

The limitation period for the execution of a sentence begins to run from the moment the decision to suspend the proceedings becomes final and ends the moment the convicted person is apprehended and begins to serve the sentence, and not the moment the decision to resume the suspended proceedings becomes final. The decision to resume the proceedings is only a formal consequence of the cessation of the reasons for its suspension.<sup>31</sup> It is worth noting that the decision issued in the event of the occurrence of the conditions specified in Article 15§ 2 of the EPC does not have the characteristics of a judgment concluding the proceedings,

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<sup>29</sup> See the Resolution of the Supreme Court of 12 December 1995, I KZP 35/95.

<sup>30</sup> Ibid.

<sup>31</sup> See the Decision of Supreme Court of 10 March 2022, IV KK 641/21, LEX no. 3409449.

because it may be suspended again<sup>32</sup> and thus does not definitively close the examination of a given issue.

## References

### Literature

- Postulski K., *Kodeks karny wykonawczy. Komentarz*, Warszawa 2017.
- Postulski K., “Stan zdrowia skazanego w aspekcie zdolności do odbywania kary pozbawienia wolności,” *Prokuratura i Prawo* 7–8, 2015, pp. 151–174.
- Postulski K., “Umorzenie i zawieszenie postępowania wykonawczego,” *Prokuratura i Prawo* 7–8, 2011, pp. 92–117.
- Seweryn R., “O niektórych aspektach zawieszenia postępowania wykonawczego,” *Prokuratura i Prawo* 9, 2021, pp. 70–89.

### Legislation

- Act of 6 June 1997, The Executive Penal Code, Journal of Laws of 2024, item 706.
- Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, Amended by Protocols nos. 3, 5 and 8 and Supplemented with Protocol no. 2, Journal of Laws of 1993, no. 61, item 284.
- Regulation of the Minister of Justice of 18 June 2019, Rules of Procedure of the Common Courts, Journal of Laws of 2024, item 867.

### Judgments

- Court of Appeal in Rzeszów, Decision of 1 October 2013, II AKzw 572/13.
- Court of Appeal in Kraków, Decision of 25 January 2006, II AKzw 827/05.
- Court of Appeal in Lublin, Decision of 28 December 2005, II AKzw 876/05, KZS 2007.
- European Court of Human Rights, Judgment of 27 July 2010, Case no. 15952/09.
- Supreme Court, Decision of 10 March 2022, IV KK 641/21, LEX no. 3409449.
- Supreme Court, Decision of 25 October 2018, II KZ 32/18, LEX no. 2569766.
- Supreme Court, Criminal Chamber, Decision of 6 September 2018, III KO 76/18.
- Supreme Court, Resolution of 12 October 2010, III KK 85/10, LEX no. 843434.
- Supreme Court, Resolution of 19 April 2000, I KZP 8/00.
- Supreme Court, Resolution of 12 December 1995, KZP I 35/95.
- Supreme Court, Ruling of 18 May 1979, IV KR 92/79.
- Supreme Court, Judgment of 13 February 1976, V KR 274/75.
- Supreme Court, Judgment of 6 July 1972, Rw 612/72.

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<sup>32</sup> Supreme Court, decision of 25 October 2018, II KZ 32/18, LEX no. 2569766.