

Adrianna Wączek

**Summary of the doctoral dissertation written under the supervision of Professor Zbigniew Kwiatkowski entitled „Evidence proceedings before the appellate court in a criminal trial”**

The subject of the doctoral dissertation is the issue of evidentiary proceedings before the appellate court in a criminal trial. The undertaken analysis on this basis focuses on numerous amendments to the Code of Criminal Procedure of 1997 and puts at the center of the considerations the issue related to the possibility of conducting evidentiary proceedings on the merits of the case by the appellate court. Determining the scope of admissible evidence by the court of second instance is important because it allows us to specify the nature of the applicable model of appeal proceedings.

Legislator Art. 1 point 159 letter a The Act of September 27, 2013 amending the Act - Code of Criminal Procedure and certain other acts repealed § 1 in Art. 452 of the Code of Criminal Procedure The provision of Art. 452 § 1 of the Code of Criminal Procedure has so far expressed the principle according to which the appellate court could not conduct evidentiary proceedings as to the merits of the case. The change in question remains fundamental to the issues discussed in this dissertation and is reflected in the research hypothesis included in the following question: whether the normative change consisting in repealing the first editorial unit of Art. 452 of the Code of Criminal Procedure, which provided for a prohibition on conducting evidentiary proceedings on the merits of the case by the appellate court, influenced the shape of the model of appellate proceedings? This hypothesis was verified by applying the dogmatic-legal method, based on a logical-linguistic analysis taking the form of an interpretation of law, to which the provisions regulating the issues of evidentiary proceedings before the appellate court in a criminal trial were subjected. In addition, a historical and descriptive method was used to illustrate the model of appeal proceedings applicable under the Code of Criminal Procedure of 1928, the Code of Criminal Procedure of 1969 and the Code of Criminal Procedure of 1997, presented from the perspective of three time intervals when this Code was in force. Considerations on the model of appeal proceedings from a comparative law perspective, focused on the issues of models of appeal proceedings applicable in German, Italian, French criminal procedure and the English system, are based on the comparative method.

This dissertation consists of an introduction and eight chapters. Within the selected chapters, a further division has been made to maintain the coherence of the considerations undertaken on the title issues.

The first chapter of the doctoral dissertation defines the concept of „appellate procedure model” and contains considerations on its individual types. The subject matter is of a fundamental nature for drawing conclusions about the scope of evidentiary proceedings within the framework of instance control. Expressing its introductory character, it focuses on the presentation of the features of individual, classic models of appellate proceedings, i.e. appellate, revision and cassation, thus allowing to finalize considerations on the state of *de lege lata* and leading to conclusions on the currently applicable model of appellate proceedings. The mixed model, distinguished and discussed last in the first chapter, is a summary of the issues discussed, thus presenting the core nature of the subject matter and the variety of assumptions of classic models of appeal proceedings.

The subject of the second chapter is the issue presented linguistically as "Model of appeal proceedings from a constitutional and convention perspective". The principle of instance, exposed through the analysis of the Constitution of the Republic of Poland, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, is closely related to the issue of models of appeal proceedings, constituting their essential source, hence it should be perceived as an element specifying the issues of evidentiary proceedings before the appellate court in a criminal trial.

The issue of formulating conclusions regarding the issue of models of appeal proceedings from a comparative law perspective was taken up in the third chapter, which discusses the issues of appeal proceedings in foreign criminal procedural legislation (German, Italian, French and Anglo-Saxon). The quotation of selected legal norms taken from legal acts such as *Strafprozeßordnung*, *Code de procédure pénale*, *Codice di procedura penale* and institutions characterizing the Anglo-Saxon system was aimed at emphasizing the essence of the Polish model of appeal proceedings. The assessment carried out within the scope of legal regulations applicable under selected legislation influenced the possibility of distinguishing similarities and differences between the Polish model of appeal proceedings and the models of foreign countries.

It was also necessary to consider the issue of appropriate application of the provisions of the proceedings before the court of first instance in appeal proceedings, focused on the correct interpretation of Art. 458 of the Code of Criminal Procedure. The considerations on this subject took the form of an analysis of general issues related to the correct decoding of the general clause "appropriate application of the provisions", as well as issues of a criminal procedural nature. By combining these two issues, appropriate conclusions were obtained to determine how the generally accepted interpretation of the clause in question affects the specification of the provisions governing proceedings before the first-instance court, which may be applied in appeal proceedings, focusing on evidentiary issues.

The fifth section presents the issue of evidentiary proceedings before the appellate court in a criminal trial from the perspective of the principles of the criminal process. The analysis in this subject focuses on such principles as: a fair criminal trial, truth, the right to defense, directness and free assessment of evidence.

The characteristics of evidentiary proceedings before the appellate court in accordance with the provisions of the Code of Criminal Procedure of 1997, presented later in the dissertation, i.e. on the basis of chapter six, include considerations of the issues in question, taking into account the legal status until the entry into force of the Act of September 27, 2013, amending the Act - Code of Criminal Procedure and certain other acts, in force in the period from July 1, 2015 to April 15, 2016 and after the entry into force of the Act of March 11, 2016 amending the Act - Code of Criminal Procedure and certain other acts set. The discussion of the shape of the evidentiary proceedings before the appellate court in the above-mentioned time periods presents a logical order that allows for the identification of the currently applicable principle of conducting evidentiary proceedings regarding the essence of the case by the appellate court, using the historical method in a process aimed at its interpretation.

Reformatory adjudication as a result of conducting strict evidence before the appellate court is combined with the currently applicable principle of conducting evidentiary proceedings regarding the essence of the case by the appellate court. For this reason, the seventh chapter discusses issues related to the presented issue.

The considerations on the issues of evidentiary proceedings before the appellate court in a criminal trial, included in chapter eight, were concluded with the formulation of conclusions on this subject by taking into account the *de lege lata* and *de lege ferenda* status. The main

proposal focuses on the legislative constitution of the principle in the light of which the appellate court is currently conducting evidentiary proceedings in the appellate instance.