Thesis 1: A search of a premises is not an activity which in any case takes place without consent or against the will of the owner of the real estate. As stipulated in Article 222 k.p.k. (Code of Criminal Procedure), the search may also be carried out in places belonging to a state or local government institution or to the military. It is difficult to expect that, in such a situation, the person in possession of the place or room will object to the search and will not agree to carry it out. However, its approval to carry out this operation does not take away its nature as a search.

Thesis 2: The prosecutor’s view that the examination of the contents of the premises by police officers to determine whether there are items proving that a criminal offence has been committed was also relevant and constituted a search within the meaning of the Code of Criminal Procedure. Article 15(1) of the Police Act indicates the forms in which police officers can carry out their tasks. Section 4 of the provision states that police officers are allowed to conduct searches under the provisions of the Code of Criminal Procedure and other laws, while point 5 of the provision contains the right to carry out personal inspection, and examine the contents of luggage and cargo in certain places and situations. The latter action does not constitute a search. Article 19(6) of the Police Act lists the permissible forms of covert surveillance which do not include checking or reviewing premises.

The judgement which is the subject of this paper is important for drawing the line between operational and exploratory activities carried out by

1 M.A., trainee prosecutor at the National School of Judiciary and Public Prosecution and assistant of the Faculty of Law and Administration of the Szczecin University.

Correspondence address: <lukasz.buczek@yahoo.com>.
police officers under the Police Act\textsuperscript{2} and procedural activities under the Code of Criminal Procedure\textsuperscript{3}. It allows to determine, firstly, whether within the non-procedural activities it is possible to carry out an inspection of premises (\textit{e.g.} in order to determine the accuracy of information about running a marijuana plantation) and, secondly, what effect the voluntary provision of premises by a person authorised to dispose thereof has on the recognition of such an inspection as a procedural activity of the searching premises.

For the purpose of discussion – and, pointing out the approval of the view of the Regional Court in Jelenia Góra – it should be pointed out that this court considered the prosecutor’s appeal against the judgement of the court of first instance, by virtue of which the defendant was acquitted of the charge that “on December 5, 2014 in W., in the county of (…), being a police officer from the County Police Station in J., while performing the procedural activity of searching the residential and business premises used by R. B. (1), A. B. (1), R. B. (2), T. B., S. B. and E. B. at the address (…), which he supervised and carried out\textsuperscript{4}, did not fulfil his official duties as he did not draw up a search protocol, did not submit a motion to the local prosecutor’s office to approve the search, did not show the persons involved his official ID card and did not instruct them about their right to demand serving the prosecutor’s decision on approval of the search, which was detrimental to R. B. (1), A. B. (1), R. B. (2), T. B., S. B. and E. B.,”\textsuperscript{5} \textit{i.e.} from the charge of committing a crime under Article 231(1) of the


\textsuperscript{4} The ruling under review does not indicate that the officer who appointed the defendant to direct his actions should be prosecuted, or that the officers who carried out the defendant’s instructions at the scene of the incident should be prosecuted. In the present case, knowing the facts only from the ruling under review, it may be pointed out at most that it was not \textit{prima facie} excluded to qualify the conduct of the officers as criminal collaboration with the defendant.

\textsuperscript{5} It may be pointed out only in the margin of deliberations that the description of the act charged by the prosecutor seems incomplete. There is no doubt that criminal liability for the crime under Article 231(1) of the Criminal Code is imposed on the person who acts to the detriment of “public or private interest”. In the description of the act charged against the defendant, there is no explicit statement that he acted to the detriment of the private interests of the mentioned victims, although this circumstance is indicated by the remaining part of the description of the act. However, what is more important is that the actions of the defendant should also be regarded as detrimental to the public interest. For the meaning of these terms, see the Supreme Court resolution of January 24, 2013,
Criminal Code. In the appeal, the prosecutor alleged that there was inaccuracy in the findings of fact adopted as the basis of the decision, which affected its content and sought an order setting aside in whole and referring the case to the court of first instance for judgment.

The justification of the court of appeal draws attention primarily to the correct statement that the Police Act does not include the right of police officers to inspect premises in order to confirm or deny that a criminal act has been committed. This is, in fact, Article 15(1) of the Police Act, which contains, the fixed set of powers which police officers may use to carry out their tasks. The indicated set does not include the power to inspect premises. Moreover, according to the legislator’s assumption, all of the above-mentioned forms of official activities must be carried out in a manner that infringes as little as possible on the personal interests of the person against whom they are undertaken (Article 15(6) of the Police Act). There is no doubt that freedom from governmental interference with the freedom to use premises, in particular living premises, is an important legally protected good.

Moreover, the justification of the ruling rightly emphasised that voluntarily making a room available by the person at whose disposal it is does not have any relevance for the “inspection of premises” to be considered as a procedural activity of a search, which is very important for the way in which police officers carry out their official duties. Thus, even if the person occupying the premises makes them available to the police officers without coercion, and even if the person spontaneously shows the premises in order to ensure and prove that there are no items prohibited by law in his or her possession, this does not entitle the conclusion as to the non-procedural nature of the activities performed. In the case under review, the victim’s voluntary surrender of the premises resulted

file ref. no. I KZP 24/12, LEX no. 1252702 and the Supreme Court judgement of February 7, 2013, file ref. no. WA 1/13, LEX no. 1277838.


The plea formulated by the prosecutor does not comply with the rules of preparing an appeal in criminal proceedings. The failure identified by the prosecutor as an infringement of factual findings results, in the opinion of the complainant, from improper assessment of evidence and overestimation of the defendant’s explanations and misinterpretation of Articles 219–220 of the Code of Criminal Procedure and Article 15(1)(4) of the Police Act. The subject of complaint should be the original misconduct of the court, and the wording of the complaint should not contain any doubts as to the misconduct noticed by the complainant, which is the case, in particular, when the appellant constructs a mixed plea. Cf. in particular Brodzisz Z, Prosecutor’s appeal. Practical Commentary. Procedural pleadings forms, Warsaw 2018, pp. 86–137.


from the entirety of a planned operation, in which several officers were involved and prepared so as to inspect what was found in the building in the course of the investigation. Thus, it was the initiative of the police as a state authority that led to the victim’s intention to demonstrate the contents of the premises – to show that he did not possess a marijuana plantation. It follows from the above that each such inspection of premises, which is planned at the stage of non-procedural activities, must be preceded by a special analysis aimed at establishing the possibility and the need to carry out other activities confirming the presence of a plantation in a given premises – as the planning of the inspection of premises in the form of a “search” is in fact a planning of a procedural search, subject to all of the requirements described in the Code of Criminal Procedure, failure of which should be assessed in light of Article 231(1) of the Criminal Code.

The argument of the Regional Court in Jelenia Góra is also correct, as to the fact that even a careless or inaccurate inspection of premises may be regarded as a procedural activity of search. The very nature of this procedural act indicates that the manner in which it is conducted depends on the direction in which the procedural authority is heading. If it is a search of a premises to find a plantation, the search need not be particularly meticulous. A marijuana plantation is difficult to conceal, after all, and even a cursory inspection of the premises indicates at least signs of its operation. Failure to confirm the information that a plantation is being run in a given premises is in fact conducting a search with negative results. As such, it must be subject to all procedural requirements. The explanation of the accused police officer, who indicated that if, during the inspection, he confirmed the fact that a marijuana plantation was operating in the area, his actions would be subject to procedural requirements because they would be a search, is significant for the case under discussion. It should be emphasised that the nature of the activity carried out does not depend on its outcome. Even a cursory inspection of the premises is not relevant to the recognition of a search as a procedural act. The search starts at the moment of entering the premises to be inspected. Therefore, even before the planned search begins, a police officer is obliged to obtain the prosecutor’s decision ordering the handing over of the property and the search\(^\text{10}\), and if the situation is urgent, to obtain a search warrant from the head of his or her unit, or as a last resort to show the person occupying the premises before the search his or her identity card and indicate that the search is being conducted on the basis of this card. Even if the person occupying the premises voluntarily demonstrates what is in the premises, the actions performed by

\(^{10}\) Decisions issued by the prosecutor at the phase of activities carried out by police officers are one of the forms of authoritative character of supervision exercised, cf. Stefański R.A, Methodology of prosecutor’s work in criminal cases. Warsaw, 2017, pp. 303–307.
police officers do not cease to have the nature of a procedural search and are still subject to the requirements described in the Code of Criminal Procedure.

The presented and argumentative extended comments of the Regional Court in Jelenia Góra rightly led in the analysed case to the conclusion that the defendant, by directing and conducting the inspection of the premises, in fact performed a procedural activity of searching, not fulfilling the proper performance of this activity of procedural obligations, thereby committing a prohibited act under Article 231(1) of the Criminal Code – which in the analysed case, due to the fact that the court of appeal found a negligible level of social harm, resulted in the annulment of the judgement of the court of first instance and in discontinuance of proceedings.

References

Publications


Chrabkowski M, Use of methods of operational work in inspection activities (comments on the paper by Chałubek K). Prosecution and Law, 2013, No. 7–8.


Legal acts


Other sources


Supreme Court judgement of February 7, 2013, file ref. No. WA 1/13, LEX No. 1277838.

Supreme Court resolution of January 24, 2013, file ref. No. I KZP 24/12, LEX No. 1252702.

**Keywords:** gloss, search, investigative operations, performing the examination of premises, Code of Criminal Procedure

**Summary:** The subject of the study is a commentary to the judgement of the appeal court, in which the court expressly denied the possibility of performing the examination of a premises as part of investigative operations, even if such activity was performed with the voluntary provision of premises by a person authorised to dispose of it.