



The Notion of ‘a Considerable Quantity’ of Narcotics in the Case Law of Polish Courts

Polonya Mahkemelerinin İçtihatlarında “Önemli Miktarda” Uyuşturucu Kavramı

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ABSTRACT

The subject matter of this paper is the notion of a considerable quantity of narcotics. ‘A considerable quantity’ of narcotics is a determining factor in many criminal narcotics offences. The term ‘a considerable quantity’ does not have a statutory definition. It is an evaluative term, and its interpretation creates many problems in the practice of the justice system. In this paper, the author attempts to illustrate the notion of ‘a considerable quantity’ as applied in case law in Poland by examining numerous court decisions. The author presents a variety of criteria used to determine whether a given quantity of narcotics is a considerable quantity and also presents sample court decisions in which these criteria were applied. This is used to demonstrate the disparity of interpretation between different courts. Drawing on the results of the analysis undertaken, the author identifies the notion of this quantity, which is currently dominant in Polish court case law. This notion conceives of ‘a considerable quantity’ of narcotics as an amount which can satisfy the needs of at least several dozen users on a single occasion, thus a quantity from which at least several dozen consumption portions can be made.

Keywords: Narcotics, illicit drugs, psychotropic substances, considerable quantity of narcotics, case law of Polish courts, Polish criminal law

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1. Introduction

To begin with, it is important to clarify that Polish legislation does not define the term ‘narcotics’. However, this term appears in various acts on counteracting drug addiction and is commonly used in discussions among lawyers and in the legal literature, as well as in mass media. The Act on Counteracting Drug Addiction, when specifying criminal offences involving narcotics, makes use of the terms ‘illicit drugs’, ‘psychotropic substances’, and ‘new psychoactive substances’, defining these in Article 4. ‘Narcotics’ is a collective category, including illicit drugs, psychotropic substances, and new psychoactive substances. It is in this meaning that the term ‘narcotics’ will be used in this paper.

The notion of ‘a considerable quantity’ of narcotics appeared in Polish law in an act addressing the issue of counteracting drug addiction in a comprehensive way for the first time.¹ In the current act dealing with this issue, Act 2005 on Counteracting Drug Addiction², the notion of ‘a considerable quantity’ of narcotics appears in the definition of criminal offences in article 53.2 (manufacturing, processing, or transforming narcotics), article 55.3 (transport into, out of, or within the European Union, purchase or supply of narcotics within the EU), article 56.3 (distribution of narcotics for sale), article 58.2 (provision of narcotics), article 62.2 (possession of illicit drugs or psychotropic substances), article 62b.2 (possession of new psychoactive substances), and article 64.2 (theft of narcotics). ‘A considerable quantity’ of narcotics is a qualifying factor for the above mentioned types of crimes. A qualified type of criminal offence entails a more severe punishment than the basic form of criminal offence. For instance, whoever contrary to the provisions of the act possesses illicit drugs or psychotropic substances may be subject to imprisonment for up to 3 years (article 62.1), and whoever contrary to the provisions of the law possesses a considerable quantity of illicit drugs or psychotropic substances may be subject to imprisonment for a period of from 1 to 10 years (article 62.2). Thus, the determination whether a suspect possesses a considerable quantity (not an ordinary quantity) of narcotics is relevant to the criminal liability which the individual may face.

1 Act dated 31 January 1985 on the Prevention of Drug Addiction, Journal of Laws 1985 no. 4 item 15 as amended.

2 Act dated 29 July 2005 on Counteracting Drug Addiction, unified text, Journal of Laws 2019 item 852 as amended.

The term 'a considerable quantity' of narcotics does not have a legally binding definition. Lawmakers have left the interpretation of this notion up to doctrine and to the courts in question. The term is evaluative and its interpretation creates numerous problems in practice. Various approaches to the interpretation of the notion appear both in the literature and in jurisprudence. This disparity is obviously particularly important in the practice of the criminal justice system. The aim of this paper is to explore what is to be understood by the notion of 'a considerable quantity' of narcotics. In this work, the notion of 'a considerable quantity' of narcotics will be presented as reflected in the case law of Polish courts. First, various criteria for recognising a given quantity of narcotics as a considerable quantity will be presented, followed by example judgements in which these criteria were applied. The disparity in interpretation between particular courts will be shown, demonstrating the gravity of the analysed issue. Next, an attempt will be made to identify the currently dominant view in Polish case law. Finally, the author will offer her own analysis of the issue.

The author believes that explaining how the notion of a considerable quantity of narcotics is interpreted in Polish law may be helpful in the practice of the criminal justice system of other countries, including non-European countries. Drug-related crime is global. All states-parties to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances shall adopt such measures as may be necessary to establish acts related to narcotic drugs or psychotropic substances and listed in article 3 paragraph 1 of this convention as criminal offences under their domestic law, when committed intentionally. Each state-party shall make the commission of the relevant offences liable to sanctions which take into account the grave nature of these offences (article 3 paragraph 4a of the convention). Undoubtedly, the nature of an offence involving a considerable quantity of narcotics is heavier than the nature of an offence involving only an ordinary quantity of narcotics. In criminal law in many countries, drug-related offenses are not only of the basic type but also of the qualified type and an amount of narcotics is often a qualifying factor. Therefore, the author hopes that this paper will be of interest to a wide group of readers.

2. Analysis of case law

The interpretation of the notion 'a considerable quantity' has created problems in the practice of the criminal justice system for years. This notion has been interpreted in many different ways, as can be seen in the justifications of many sentences. For instance, in 2003 the Court of Appeals in Katowice stated that "case law practice in this area is not uniform

and has not generated well-defined precedents. (...) The determination of whether a given quantity of illicit drugs is to be considered a considerable quantity or an ordinary quantity is left to the courts, and these have assessed this issue in such divergent manners that it is impossible based on case law practice to draw any general conclusions”.³ Both in the literature and in case law itself, it is stated that in terms of determining a quantity to be ‘a considerable quantity’ of narcotics, three conceptions are applied in case law: a quantitative conception, a quantitative-qualitative conception, and a quantitative-qualitative conception which takes into account the intended use of the narcotics.⁴

The quantitative conception assumes that only quantitative criteria should be taken into consideration. This criterion in practice leads to an assessment of the quantity of a given narcotic expressed in grams and other comparable units (kilograms, tonnes, etc.). It is unimportant what kind of narcotic is under consideration or its concentration. The Supreme Court of Poland, in a verdict dated 17 June 1999, stated that “the type of criminal offence qualified by the factor ‘a considerable quantity’ was created, however, with application solely of the quantitative criterion, with no possibility of taking into consideration the type of substance intended for sale (...) the application of the qualitative criterion with regard to determination of ‘a considerable quantity’ would be a *contra legem* interpretation”.⁵ The Court of Appeals in Kraków, in a verdict dated 08 November 2013, stated that “the Court of Appeals has for many years assumed that a considerable quantity of illicit drugs is one which is sufficient for the intoxication at one time of tens of thousands of users. The determination of a considerable quantity of illicit drugs results strictly from the application of a quantitative criterion”⁶, and in a verdict dated 06 June 2017 also emphasised that “The criterion for the determination of a considerable quantity of narcotics is exclusively the amount of such narcotics, and not the type of narcotic nor whether it is intended for personal use or for sale”.⁷

3 Verdict of the Court of Appeals in Katowice dated 06 November 2003, II AKa 56/03, LEX no. 183333.

4 See, for example, A. Muszyńska, K. Łuczczak, *Ustawa o przeciwdziałaniu narkomanii. Komentarz* [The Act on Counteracting Drug Addiction: Commentary], Warsaw 2008, Commentary to Art. 53, thesis VI.2; M. Kulik [in:] M. Mozgawa (ed.), *Pozakodeksowe przestępstwa przeciwko zdrowiu. Komentarz* [Non-code crimes against health: Commentary], Warsaw 2017, Commentary to Art. 53, thesis 32; A. Malasińska-Nagórny, *Pojęcie „znacznej ilości” środków odurzających* [The notion of ‘a considerable quantity’ of illicit drugs], “Prokuratura i Prawo” 2013, no. 11, p 160; Decision of the Supreme Court dated 23 September 2009, I KZP 10/09, Legalis no. 169905.

5 Verdict of the Supreme Court dated 17 June 1999, IV KKN 813/98, LEX no. 38935.

6 Verdict of the Court of Appeals in Kraków dated 8 November 2013, II AKa 220/13, LEX no. 1466287.

7 Verdict of the Court of Appeals in Kraków dated 06 June 2017, II AKa 71/17, Legalis no. 1807187. See also the Decision of the Court of Appeals in Kraków dated 08 October 2014, II AKz 373/14, LEX no. 1616028.

The quantitative-qualitative conception for determination of whether an amount constitutes a considerable quantity takes into account not only the quantity but also the quality of the narcotic (whether it is a soft or hard drug). The Supreme Court, in a verdict dated 01 March 2006, stated that the criteria determining whether an amount is a considerable quantity are first of all the type of narcotics (soft or hard) and secondly quantity. The court stated that the term "considerable", as understood by the Act on Counteracting Drug Addiction, may also mean the amount of a given illicit drug in relation to the needs of a single addicted user. "Therefore, if the object of the criminal offence is such an amount of these substances which can satisfy the needs of at least several dozen addicted users, then it should be understood that this is a considerable quantity".⁸ The Court of Appeals in Poznań, in a verdict dated 03 November 2015, clearly stated that "the notion of 'a considerable quantity' of a narcotic is based on a quantitative-qualitative criterion, meaning the amount of an illicit drug or psychotropic substance which can on a single occasion intoxicate at least several dozen persons".⁹ The Court of Appeals in Gdańsk, in a verdict dated 19 December 2012, emphasised that the correct interpretation of the notion of 'a considerable quantity' should take into account quantitative aspects (weight) as well as the quality of the narcotic (level of toxicity).¹⁰ A similar quantitative-qualitative approach was taken by the Court of Appeals in Lublin in a verdict dated 14 February 2006, in which the court stated that "when determining whether a given amount of illicit drugs or psychotropic substances is considerable, not only the weight (milligrams, grams, kilograms) should be taken into account, but also the type of narcotic (hard or soft) and its degree of harmfulness to the human body, as well as the number of doses which can be portioned out from this quantity, and thus the number of persons which can on a single occasion become intoxicated from this amount. Assuming that the minimum dose of amphetamines is 10 mg, the contested amount of 89.84 grams of amphetamines found in the possession of the defendant, from which 8984 doses can be prepared and from which the same number of persons can become intoxicated, should be classed as 'a considerable quantity' of a psychotropic substance as understood by the provisions of the Act on Counteracting Drug Addiction".¹¹ A quantitative-qualitative position was also taken by the Court of

8 Verdict of the Supreme Court dated 01 March 2006, II KK 47/05, LEX no. 182794. See also the Decision of the Supreme Court dated 01 February 2007, III KK 257/06, LEX no. 323801.

9 Verdict of the Court of Appeals in Poznań dated 3 November 2015, II AKa 115/15, LEX no. 2122468.

10 Verdict of the Court of Appeals in Gdańsk dated 19 December 2012, II AKa 430/12, LEX no. 1271815.

11 Verdict of the Court of Appeals in Lublin dated 14 February 2006, II AKa 14/06, LEX no. 179040.

Appeals in Wrocław in a verdict dated 30 May 2003, in which the court stated that “Among the evaluative characteristics of offences which violate the provisions of the Act on Counteracting Drug Addiction which determine the basis for criminal liability as either basic or a privileged offence are the criterion of quantity and the criterion of quality, that is the type of narcotic substance intended for sale”.¹²

The quantitative-qualitative conception, taking into account the intended use of the narcotics, is based not only on the criteria of quantity and quality, but also includes the intended use of the narcotics (whether for commercial purposes or personal use). This conception is reflected for instance in a verdict of the Court of Appeals in Warsaw dated 18 April 2000 in which the court stated that “The decisive criteria for whether an amount of illicit drugs is a considerable quantity, a not considerable quantity, or an ordinary amount are weight (grams, kilograms, tonnes, number of portions), type of illicit drug (with a division into soft and hard drugs), and the intended use of the illicit drugs (commercial purposes or personal use)”.¹³ This approach was cited and shared by the Court of Appeals in Katowice in a verdict dated 6 November 2003 in which the court stated that “a considerable quantity is one which is above the ordinary or exceptional, both in terms of the weight of the illicit drugs, and also their type and intended use”.¹⁴ A similar opinion was shared by the Court of Appeals in Białystok in a verdict dated 09 August 2012, in which the court stated that “A decisive criterion for determining whether an amount of illicit drugs is ‘considerable’, apart from its weight and type, is also its intended use.” The court indicated that “cases involving narcotics which are intended for further sale should be treated differently than cases where the narcotics are intended for personal consumption”.¹⁵ In a similar decision, the Court of Appeals in Łódź, in a verdict dated 21 January 2014, argued that “when determining in a specific case whether we are dealing with an ordinary amount of illicit drugs or psychotropic substances or a considerable quantity, the following should be taken into consideration: a) the type of illicit drug (with a decisive distinction between soft and hard illicit drugs), b) the weight of the illicit drugs, and c) their intended use (for personal use or for distribution)”.¹⁶

12 Verdict of the Court of Appeals in Wrocław dated 30 May 2003, II AKa 167/03, Legalis no. 59050.

13 Verdict of the Court of Appeals in Warsaw dated 18 April 2000, II AKa 22/00, LEX no. 45325.

14 Verdict of the Court of Appeals in Katowice dated 06 November 2003, II AKa 56/03, LEX no. 183333.

15 Verdict of the Court of Appeals in Białystok dated 09 August 2012, II AKa 140/12, LEX no. 1220420.

16 Verdict of the Court of Appeals in Łódź dated 21 January 2014, II AKa 255/13, Legalis no. 1024093.

When analysing the decisions of courts addressing cases in which the issue of a considerable quantity of narcotics is involved, it can be seen that these courts, deciding *in concreto* whether the amount in question is a considerable quantity or not, very often refer to the number of portions that may be made from a given amount of narcotics, and thus to the number of persons who can be intoxicated by the quantity of narcotics seized in a given case. These courts do so regardless of which conception of the assessment of 'a considerable quantity' is applied. Incidentally, it should be stressed that these courts of course are not required to indicate in the justification for their decisions which conception of 'a considerable amount' was applied in the case being deliberated, and they often do not do so. Therefore, in the literature there are various views on the assessment of the criterion for the number of portions which can be made from a given amount of narcotics (the number of persons who can be intoxicated by a given amount of narcotics). Some claim that the conception of the number of portions which can be made from a given amount of narcotics is a variation of the quantitative-qualitative conception.¹⁷ Others claim that in line with the quantitative conception, the measure of whether an amount is 'considerable' may also involve the relation of the given amount narcotics to the needs of a single person.¹⁸ The disparities in viewpoints presented above lead to the conclusion that neither the name of the conception nor the association of a given court decision with one of these conceptions is important. It is far more important to assess the case law of courts in terms of the criteria assumed in a given case in determining whether an amount is a considerable quantity and to provide examples of amounts of narcotics which have been assessed as considerable.

As mentioned above, courts very frequently refer to how many portions may be made from a given amount of narcotics, and thus how many persons may be intoxicated by the amount seized in a given case. The Court of Appeals in Warsaw, in a verdict dated 04 August 2017, stated that "a considerable quantity constitutes an objective criterion and is measured by the number of portions for consumption (of differing weights depending on the type of narcotic and its specific intoxicating power), regardless of whether the illicit drug or psychotropic substance is intended for the personal needs

17 See also M. Kulik, *op. cit.*, Commentary to Art. 53, thesis 34.

18 See also E. Stępień, "Znaczna ilość" środków odurzających, substancji psychotropowej i słomy makowej. Uwagi na tle ustawy o przeciwdziałaniu narkomanii w świetle orzecznictwa Sądu Najwyższego i sądów powszechnych ["A considerable quantity" of illicit drugs or psychotropic substance and poppy straw. Comments in relation to the Act on Counteracting Drug Addiction in view of the case law of the Supreme Court and common courts], "Kwartalnik Sądowy Apelacji Gdańskiej" 2015, no. III, p. 60-61. See also T. Kozioł, *Znaczna ilość środka odurzającego* [A considerable quantity of illicit drugs], "Prokuratura i Prawo" 2010, no. 11, p. 68.

of the defendant or whether the defendant has different intentions regarding the substances”.¹⁹ Moreover, the Supreme Court, in a decision dated 23 February 2017, clearly stated that the decisive criterion for determining whether a given amount is a considerable quantity is the number of consumption portions which can be made from this amount.²⁰ However, an analysis of case law from recent years indicates that even with universal acceptance of the criterion of the number of portions, there exist between courts substantial disparities regarding how many consumption portions should be understood as a considerable quantity of narcotics. Taking into account the case law of courts of appeals, the most isolated position was held by the Court of Appeals in Kraków, a position which has been expressed in numerous verdicts. In one such verdict, dated 31 August 2005, maintaining its interpretation, the court once again stated that a considerable quantity of narcotics is one which is sufficient to intoxicate on a single occasion tens of thousands of persons.²¹ In a verdict dated 30 May 2007, the Court stated that “when defining the notion of a considerable quantity of narcotics, the primary criterion is the number of portions which can be made with reference to the pure active substance, and not to an amount which can be freely diluted by the dealer. A considerable quantity is one which is sufficient to intoxicate tens of thousands of persons, and this is certainly not the case when the amount is sufficient for several dozen persons (...). The differentiation of criminal liability as intended by the provisions of the Act on Counteracting Drug Addiction indicates a distinction between behaviours which concern a relatively small amount of narcotics and behaviours on a mass scale which involve wholesale distribution. The extension of the notion of a considerable quantity into behaviours concerning relatively small amounts would be in contradiction with the idea of just punishment”.²² In a verdict dated 08 July 2009, the Court of Appeals in Kraków clearly indicated that “a considerable quantity of narcotics is no less than 2 kg of active substance, as from such an amount at least tens of thousands (20) of portions can be made”.²³ In a verdict dated 01 February 2011, this same court emphasised that it was reaffirming its earlier view that “a considerable quantity of illicit drugs is an amount which is sufficient on a single occasion to intoxicate tens of thousands of persons, as this is suggested by the linguistic interpretation of the notion

19 Verdict of the Court of Appeals in Warsaw dated 04 August 2017, II AKa 168/17, Legalis no. 1658268.

20 Decision of the Supreme Court dated 23 February 2017, IV KK 19/17, LEX no. 2254800.

21 Verdict of the Court of Appeals in Kraków dated 31 August 2005, II AKa 167/05, LEX no. 163451.

22 Verdict of the Court of Appeals in Kraków dated 30 May 2007, II AKa 85/07, Legalis no. 89157.

23 Verdict of the Court of Appeals in Kraków dated 08 July 2009, I AKa 132/00, Legalis no. 218293.

'a considerable quantity' which excludes the possibility that it could regard smaller quantities, as well as by the consideration that a qualified type of criminal offence should not include the majority of possible cases of commission of the offence, as this majority should represent the basic form of the offence, and the qualified offence should concern extraordinary, exceptional situations involving wholesale distribution".²⁴ The Court of Appeals in Kraków consistently maintained this position in 2013, stating in a verdict dated 05 April 2013 that "the Court of Appeals as currently composed also expresses the view that a considerable quantity of narcotics is one which is sufficient to intoxicate on a single occasion tens of thousands of persons, and refers back to the position of this court which has been expressed and justified repeatedly in past cases. This quantity should concern wholesale amounts, extraordinary in the context of the regular trade in illicit drugs. Only then does this qualifying notion make sense in legal and penal terms. Such an interpretation of the notion in question is in accordance with the division of types of narcotics offences into privileged, basic, and qualified offences. The boundaries between these (based on the amount of illicit drugs) should be clearly defined, not giving the possibility of free interpretation, and the scope of these notions is appropriately broad. Moreover, from this perspective a quantity of illicit drugs sufficient to intoxicate on a single occasion several, several dozen, hundreds, or even several thousands of persons does not meet the criterion for a considerable quantity as a characteristic of a qualified offence".²⁵

At the same time that the Court of Appeals in Kraków took the position presented above, the Court of Appeals in Gdańsk expressed the opinion that a considerable quantity of narcotics is one which is sufficient to intoxicate on a single occasion at least several dozen persons.²⁶ Similarly, the Court of Appeals in Wrocław expressed the opinion that a considerable quantity of narcotics should be understood as an amount which is sufficient to satisfy the needs on a single occasion of at least several dozen addicted users.²⁷ Also during the same period, the Supreme Court consistently stated that 'a considerable quantity' as understood by the Act on Counteracting Drug Addiction

24 Verdict of the Court of Appeals in Kraków dated 01 February 2011, II AKa 142/10, Legalis no. 589101.

25 Verdict of the Court of Appeals in Kraków dated 05 April 2013, II AKa 47/13, Legalis no. 732951.

26 Verdict of the Court of Appeals in Gdańsk dated 19 December 2012, II AKa 430/12, LEX no. 1271815.

27 Verdict of the Court of Appeals in Wrocław dated 02 February 2012, II AKa 413/11, Legalis no. 589102; Verdict of the Court of Appeals in Wrocław dated 08 March 2012, II AKa 45/12, Legalis no. 589103; Verdict of the Court of Appeals in Wrocław dated 15 October 2012, II AKa 220/12, LEX no. 1238635; Verdict of the Court of Appeals in Wrocław dated 13 November 2013, II AKa 329/13, LEX no. 1400521; Verdict of the Court of Appeals in Wrocław dated 30 April 2015, II AKa 79/15, LEX no. 1711601; Verdict of the Court of Appeals in Wrocław dated 23 July 2015, II AKa 187/15, Legalis no. 1337321.

is an amount of illicit drugs or psychotropic substances which can on a single occasion satisfy the needs of at least several dozen addicted users (an amount which can intoxicate on a single occasion at least several dozen persons).²⁸ A significant change in the case law of the Court of Appeals in Kraków took place only a few years ago. In a verdict dated 06 June 2017, this court stated that “The criterion for the determination of a considerable quantity of narcotics is exclusively the amount, and not the type nor the intended purpose whether for personal use or for sale. This Court of Appeals currently understands as a considerable quantity such an amount as is sufficient to satisfy the needs of several dozen users, as was previously established by the Supreme Court. The Court of Appeals has rejected its previously accepted criterion of 2 kg as an amount sufficient to satisfy on a single occasion the needs of tens of thousands of users, in the interest of maintaining uniformity in the case law of common courts”.²⁹ The Court of Appeals in Kraków made a similar statement in a verdict dated 12 December 2017, emphasising that “the disparities in the case law of common courts which previously occurred in connection with the interpretation of the notion of a considerable quantity no longer occur as a result of unification of case law practice by the Supreme Court”.³⁰

It is worthwhile to provide examples of what amounts of narcotics have in specific cases been understood as considerable quantities or otherwise. Some years ago, the Court of Appeals in Katowice determined that the 144 g of marijuana, 0.8 g of amphetamines, and ½ tablet of XTC, which a defendant attempted to transport from the Netherlands to Poland, was not ‘a considerable quantity’. In the justification for this decision, the court argued, among other things, that “since in practice, smuggling of narcotics takes place in dozens of kilograms, or even tonnes (on ships) and such amounts should undoubtedly be understood as considerable quantities, it is impossible to accept that amounts defined in grams (144g) are the ‘considerable’ quantity which is mentioned in the Act, in particular since in the case of the defendant we are dealing with marijuana, a soft drug, one with weaker effects, a larger quantity of which needs to be used in order to affect a larger number of persons”.³¹ In a case in which the

28 See also Decision of the Supreme Court dated 01 February 2007, III KK 257/06, LEX no. 323801; Verdict of the Supreme Court dated 10 June 2008, III KK 30/08, LEX no. 418629; Decision of the Supreme Court dated 23 September 2009, I KZP 10/09, Legalis no. 169905; Verdict of the Supreme Court dated 04 July 2011, IV KK 127/11, LEX no. 897769; Decision of the Supreme Court dated 23 February 2017, IV KK 19/17, Legalis no. 1580554.

29 Verdict of the Court of Appeals in Kraków dated 06 June 2017, II AKA 71/17, Legalis no. 1807187.

30 Verdict of the Court of Appeals in Kraków dated 12 December 2017, II AKA 242/17, Legalis no. 1843591.

31 Verdict of the Court of Appeals in Katowice dated 06 November 2003, II AKA 56/03, LEX no. 183333.

defendant attempted to transport into Poland illicit drugs in the form of 77.3 g of marijuana, from which 77 portions could be made, as well as 6.2 g and 33.6 g of dried and fresh hallucinogenic mushrooms respectively, from which roughly 20 portions could be made, and 90 milligrams of amphetamines, from which 9 portions could be made (in total about 100 portions of three different illicit drugs), the Court of Appeals in Warsaw determined that this was not 'a considerable quantity' of narcotics.³² The Court of Appeals in Kraków stated that an amount between 139 and 2,216 portions of narcotics was not a considerable quantity, an amount that could have been made from the seized 3 kg of poppy straw.³³

The Court of Appeals in Lublin stated that "Nearly 100 grams of heroin is a considerable quantity in such an obvious way that it does not require further proof. It is enough to recall that the measure of whether an amount is 'a considerable quantity' may be the relation of the particular illicit drug to the needs of a single user addicted to this drug. It is commonly accepted in case law that roughly 50 g of amphetamines, in accordance with the aforementioned principle, constitutes a considerable quantity. Since heroin is an incomparably stronger narcotic, it remains beyond the shadow of a doubt that an amount of approximately 100 grams constitutes a considerable quantity".³⁴ In another verdict, the Court of Appeals in Lublin determined that 89.84 g of amphetamines was 'a considerable quantity'.³⁵ The Court of Appeals in Kraków determined as a considerable quantity the amount of 200 g of amphetamines, arguing that since a single portion of this illicit drug is generally 0.1 g, then the amount in question was sufficient to make 2000 portions, thus sufficient to satisfy the needs on a single occasion of a large number of persons.³⁶ The Court of Appeals in Wrocław determined roughly 5 grams of methamphetamines to be a considerable quantity.³⁷

From the most recent case law, three extracts from the verdicts of three different courts of appeals will be cited. The Court of Appeals in Warsaw determined that "The cultivation of 24 plants of cannabis of any type other than hemp, from which an amount of plant matter may be obtained allowing for the production of at least 1661 portions of an illicit drug and

32 Verdict of the Court of Appeals in Warsaw dated 18 April 2000, II AKa 22/00, LEX no. 45325.

33 Verdict of the Court of Appeals in Kraków dated 15 May 2008, II AKa 70/08, LEX no. 466560.

34 Verdict of the Court of Appeals in Lublin dated 17 December 2002, II AKa 282/02, LEX no. 80602. Also: Verdict of the District Court in Warsaw dated 18 July 2017, VI Ka 1530/16, LEX no. 2361875.

35 Verdict of the Court of Appeals in Lublin dated 14 February 2006, II AKa 14/06, LEX no. 179040.

36 Verdict of the Court of Appeals in Kraków dated 19 October 2000, II AKa 124/00, LEX no. 44955.

37 Verdict of the Court of Appeals in Wrocław dated 02 February 2012, II AKa 413/11, Legalis no. 589102.

for the production of an illicit substance in the form of marijuana in a total amount of 136.64 grams, sufficient to make at least 136 individual portions, undoubtedly constitutes a considerable quantity as understood by article 53.2 and article 63.3 of the Act 2005 on Counteracting Drug Addiction”.³⁸ In the opinion of the Court of Appeals in Kraków (expressed after the change of position of this court regarding what constitutes a considerable quantity), “The cultivation by the defendant of three plants of cannabis other than hemp, and the ultimate obtaining from one of these plants of 53.318 grams of plant matter would be sufficient to obtain from 42 to 145 portions for sale, thus constitutes a considerable quantity sufficient for the intoxication of several dozen persons”.³⁹ The Court of Appeals in Lublin argued thus: “Assuming that a portion sufficient for the intoxication of a single person is 0.1-0.5 g, the determination that 100 grams of marijuana constitutes a considerable quantity raises no doubts”.⁴⁰ A slightly different opinion was expressed by the Court of Appeals in Wrocław, which stated that “it is difficult to accept that a single portion of marijuana weighing roughly 0.2 g can satisfy the needs for intoxication of a single person addicted to marihuana. For this satisfaction of the needs of a single person to be possible (and thus for intoxication to occur), an amount of at least 1 gram is necessary, allowing for the preparation of 2 or 3 portions, and only the use of such an amount creates the conditions for the satisfaction of a single addicted user”. This court also shared the opinion of the District Court in Świdnica, which determined that 28.86 grams of marijuana was not a considerable quantity. Interestingly, the public prosecutor (in this case the accusing party) appealed the decision of the District Court in Świdnica, claiming that the defendant possessed a considerable quantity of narcotics and requesting that the offence be recognised as a qualified offence of possession of narcotics.⁴¹

Of course, of particular importance are the decisions of the Supreme Court. This court, by virtue of its authority, affects all the decisions of courts of lower rank. Strictly speaking, the case law and decisions of the Supreme Court in Poland are not a source of law, yet the views expressed by the Supreme Court influence the decisions of lower courts in particular cases. On the other hand, the Supreme Court has on more than one occasion indicated that the views expressed in its case law, apart from cases explicitly addressed in legislation, are not binding on courts handing down decisions in other cases, as a criminal court independently decides all manner of issues, but that the

38 Verdict of the Court of Appeals in Warsaw dated 04 August 2017, II AKa 168/17, Legalis no. 1658268.

39 Verdict of the Court of Appeals in Kraków dated 12 December 2017, II AKa 242/17, Legalis no. 1843591.

40 Verdict of the Court of Appeals in Lublin dated 02 March 2017, II AKa 279/16, LEX no. 2284893.

41 Verdict of the Court of Appeals in Wrocław dated 23 March 2016, II AKa 63/16, LEX no. 2047161.

condition for the acceptance of a decision of a common court which is at variance with a decision of the Supreme Court is an exhaustive and logical justification of the legal opinions expressed therein.⁴² The Supreme Court also stated that in a situation where significant disparities in possible legal assessments exist, a court handing down a decision is obliged to consider all judicial arguments associated with the incident in question and to assess the significance of these arguments.⁴³

Moreover, the Supreme Court, when considering cassation, may for example reverse a verdict already handed down and refer the case back to the court of first instance for further examination if the Supreme Court determines that the court (that is, the court of second instance, which upheld the verdict of the court of first instance) committed a serious violation of the provisions of substantive law. The Supreme Court did precisely this, for example, in a case in which the defendant was in possession of 200 grams of marijuana and 39 grams of hashish, and in which the courts of lower instances did not determine this amount to be a considerable quantity of narcotics.⁴⁴ In the opinion of the Supreme Court, the defendant possessed a considerable quantity of narcotics, and the classification of the crime as a basic offence (instead of a qualified offence due to the considerable quantity of narcotics) constituted a violation of substantive law. In another case, the Supreme Court determined that the amount of 9.86 g of marijuana and 4.64 g of amphetamines recovered during a search constituted an amount of narcotics sufficient for the intoxication on a single occasion of 55-60 persons, thus making it 'a considerable quantity'.⁴⁵

3. Discussion

The notion of 'a considerable quantity' of narcotics has for years been a source of controversy both in criminal law doctrine and in case law. There have been repeated calls for lawmakers to define this notion in the Act on Counteracting Drug Addiction.⁴⁶

42 Verdict of the Supreme Court dated 27 May 2002, V KKN 188/00, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/V%20KKN%20188-00.pdf>; Decision of the Supreme Court dated 13 November 2007, V KK 287/07, LEX no. 332943.

43 Decision of the Supreme Court dated 25.02.2009, I KZP 31/08, LEX no. 486168.

44 Verdict of the Supreme Court dated 07 May 2013, II KK 25/13, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%2025-13.pdf>.

45 Decision of the Supreme Court dated 01 February 2007, III KK 257/06, LEX no. 323801.

46 See, for example, B. Kurzępa [in:] A. Ważny (ed.), *Ustawa o przeciwdziałaniu narkomanii. Komentarz* [The Act on Counteracting Drug Addiction: Commentary], Warsaw 2019, LEX, Commentary to Art. 53, thesis 18; J. Kanarek, *Ocenny charakter znamienia "znaczej ilości" środków odurzających. Próba reinterpretacji przyjmowanych w doktrynie i orzecznictwie poglądów* [The evaluative character of the factor 'a considerable quantity' of illicit drugs. An attempt at reinterpretation of views accepted in doctrine and case law], "Przegląd Sądowy" 2019, no. 1, p. 61.

One court handing down decisions in such matters even turned to the Constitutional Tribunal with a request for examination of the constitutionality of laws in which this notion appears as a determining factor of a criminal offence. The Constitutional Tribunal ruled that such laws are in fact constitutional.⁴⁷ The author of this paper is of the opinion that the factor ‘a considerable quantity’ meets the standards of constitutionality.⁴⁸ It is worth noting that in the opinion of the Supreme Court, there is no need to introduce a statutory definition of what constitutes ‘a considerable quantity’ as “the considerations of the courts of appeals and of the Supreme Court are in this matter completely sufficient”.⁴⁹

As has been pointed out above, there are three conceptions of interpretation of the notion ‘a considerable quantity’ of narcotics in Polish jurisprudence. Although the subject of this paper is the issue of what constitutes a considerable quantity of narcotics in terms of case law, it is worthwhile to briefly mention the views on this issue which prevail in criminal law doctrine, as judges frequently refer in their decisions to views expressed in the literature. In this way, the views of academics help shape the views of courts as expressed in case law. Thus, regarding the notion of ‘a considerable quantity’, there are also three conceptions in the literature, although in the latest criminal law literature it appears that the quantitative-qualitative conception dominates.⁵⁰ The author of this paper also supports this conception. In assessing ‘a considerable quantity’ of narcotics, the criterion of intended use is not relevant. This element, the intended use of the narcotics (whether for personal use or for sale), should become relevant in the assessment of the degree of social harm inflicted by the offence, and thus in determining the punishment.⁵¹

The analysis conducted in this paper leads to the conclusion that in case law involving the determination of ‘a considerable quantity’ of narcotics, the criterion of the number of consumption portions which can be made from a given amount of narcotics dominates. Within the last dozen years or so, there have been enormous disparities between courts

47 Verdict of the Constitutional Tribunal dated 14 February 2012, P 20/10, LEX no. 1110344.

48 See also M. Kulik, *op. cit.*, Commentary to Art. 53, thesis 31.

49 Decision of the Supreme Court dated 23 September 2009, I KZP 10/09, LEX no. 518123.

50 See, for example, M. Kulik, *op. cit.*, Commentary to Art. 53, thesis 34; B. Kurzepa, *op. cit.*, Commentary to Art. 53, thesis 18; T. Srogosz, *Ustawa o przeciwdziałaniu narkomanii. Komentarz*, Warsaw 2008, Commentary to Art. 53, thesis 7.A. Expressed differently (in favour of the quantitative-qualitative conception with consideration of the intended use of the narcotics) among others in E. Stępień, *op. cit.*, pp. 68-69.

51 See also: the Supreme Court in a verdict dated 07 May 2013, II KK 25/13, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/III%20KK%2025-13.pdf>; Verdict of the Court of Appeals in Warsaw dated 04 August 2017, II AKa 168/17, Legalis no. 1658268.

in assessing how many consumption portions are sufficient to establish that the offence involves a considerable quantity of narcotics. The number of portions accepted as a minimum for the establishment of a considerable quantity has varied from several dozen portions to tens of thousands of portions. The Supreme Court, however, has consistently stated that the lower figure of several dozen portions is sufficient to establish a considerable quantity. After the change in position of the Court of Appeals in Kraków, the most recent case law of courts of appeals and lower courts regarding this issue have been relatively uniform and in accordance with the position of the Supreme Court.⁵² This can be illustrated by a recent verdict, the verdict of the District Court in Sieradz dated 21 October 2019.⁵³ It should, however, be stressed that the change in position of the Court of Appeals in Kraków was dictated by the desire to maintain uniformity of case law in common courts (as the Court itself indicated in explaining its change of position), and not by a conviction of the validity of the divergent view. It is also worth noting that the original view of the Court of Appeals in Kraków was shared by many judges of lower instances, not only within the Kraków Appellate.⁵⁴ With regard to the number of portions, intermediary positions in case law can also be seen. Namely, the District Court in Kielce stated that a considerable quantity of narcotics is one which is sufficient for the intoxication of several thousands of persons.⁵⁵

It is also worthwhile to note that in the latest literature, the view has been expressed that “a considerable quantity is several hundred, several thousand, or more portions”, which was understood to be indicative of a large-scale criminal procedure.⁵⁶ This view is in and of itself not a novelty, as it had previously been expressed in case law. For example, the Court of Appeals in Wrocław stated that ‘a considerable quantity’ of narcotics is one which allows for the preparation of at least several hundred individual

52 See also Verdict of the Court of Appeals in Wrocław dated 14 November 2018, II AKa 251/18, LEX no. 2609639; Verdict of the Court of Appeals in Wrocław dated 21 November 2018, II AKa 376/17, LEX no. 2613655.

53 Verdict of the District Court in Sieradz dated 21.10.2019, II Ka 145/19, LEX no. 2761534.

54 See also the verdict of one of the district courts in the Wrocław Appellate whose verdict was considered by the Court of Appeals in Wrocław (verdict of the Court of Appeals in Wrocław dated 20.02.2008, II AKa 10/08, LEX no. 357147); J. Marciniak (judge in the regional court), M. Marciniak, „Znaczna ilość środków odurzających” a wymóg określoności prawa karnego [A considerable quantity of illicit drugs and requirement to define in criminal law], „Wojskowy Przegląd Prawniczy” 2011, no. 1, p. 82.

55 Verdict of the District Court in Kielce dated 24.09.2013, IX Ka 742/13, LEX no. 1717751.

56 Also V. Konarska-Wrzosek [in:] M. Bojarski (ed.), *System Prawa Karnego. Tom XI. Szczególne dziedziny prawa karnego. Prawo karne wojskowe, skarbowe i pozakodeksowe* [The criminal law system. Volume 11. Particular areas of criminal law. Military criminal law, tax criminal law and non-code criminal law], Warsaw 2014, p. 443.

portions capable of intoxicating at least several hundred persons, ruling that the amount of 30.96 grams of marijuana allowing for the obtaining of roughly 62 individual portions was not a considerable quantity.⁵⁷ In the opinion of the author of this paper, this view deserves approbation. It is unwise to excessively expand the notion of ‘a considerable quantity’, and thus set an excessively low minimum threshold for determining what constitutes ‘a considerable quantity’. Bearing in mind the Latin maxim *nullum crimen sine lege stricta*, factors characterising qualified criminal offences should not be interpreted expansively. Moreover, the majority of cases of a given criminal offence, such as the offence of possession of narcotics, should be classified as the basic type of offence (and not the qualified type or the privileged type of offence). It should be remembered that the provisions regarding types of qualified narcotics offences are intended to severely punish dealers, and not single individuals in possession of narcotics. The assumption that a considerable quantity of narcotics is an amount of at least several dozen consumption portions, i.e. about 30, leads in practice to a situation in which many low-level possessors of narcotics (consumers) are sentenced for qualified offences. It should however be mentioned that in the Polish literature, the view that several dozen portions is sufficient to establish ‘a considerable quantity’ is still dominant.⁵⁸

4. Final conclusion

Summing up, it should be clearly stated that in accordance with current Polish case law, ‘a considerable quantity’ of narcotics is one which can satisfy the needs on a single occasion of at least several dozen persons, thus representing an amount from which at least several dozen portions can be made. At the same time, it should be noted that the current line of reasoning in case law may be subject to change in the near future. This eventuality is suggested by one of the most recent verdicts of the Supreme Court regarding ‘a considerable quantity’ of narcotics, a verdict handed down on 11 October 2017.⁵⁹ The Supreme Court, overturning the verdict of the district court which had maintained the decision of the regional court, reversed the verdict and referred the case back to the district court for further examination in appeals proceedings. In this particular case, the defendant was in possession of illicit drugs

57 See also the verdict of the Court of Appeals in Wrocław dated 20 February 2008, II AKa 10/08, LEX no. 357147.

58 See also T. Srogosz, *op. cit.*, Commentary to Art. 53, thesis 7.A; A. Muszyńska, K. Łuczarski, *op. cit.*, Commentary to Art. 53, thesis VI.2; B. Kurzępa, *op. cit.*, Commentary to Art. 53, thesis 18.

59 Verdict of the Supreme Court dated 11 October 2017, III KK 73/17, LEX no. 2389557.

in the amount of 18.627 grams of marijuana and a psychotropic substance in the form of 0.93 grams of Pentedrone and was convicted of possession of a considerable quantity of narcotics, thus of a qualified offence. The courts of lower instance determined that the defendant possessed no fewer than 37 portions of marijuana, i.e. several dozen portions, constituting 'a considerable quantity'. The Supreme Court alleged that both lower instance courts had incorrectly interpreted the factor 'a considerable quantity'. The Supreme Court argued that the claim made in many decisions of the Court that "a considerable quantity of illicit drugs or psychotropic substances is one which can on a single occasion satisfy the needs of at least several dozen addicted users" does not mean that in every case the amount of narcotics capable of satisfying these needs on a single occasion must by definition be regarded as 'a considerable quantity' as understood by the Act on Counteracting Drug Addiction. The Supreme Court stressed that "The clear conclusion that can be drawn from statements included in case law must be understood in negative terms. It should lead to the idea that an amount of narcotics which is not capable of satisfying the needs of several dozen addicted users on a single occasion may not be classified as a considerable quantity". Later in this same verdict, the Supreme Court argued that in determining the occurrence of 'a considerable quantity' of narcotics, apart from the quantitative-qualitative criterion, the deliberating body should also take into account for what purpose the defendant possessed the illicit drugs or psychotropic substances and also whether this individual is addicted to these substances. The Supreme Court emphasised that "only such a procedure is capable of minimising the risk that an instrument such as a qualified offence, by definition intended to suppress dealers and not consumers of their products, will not completely incidentally be applied against persons towards whom it was not intended". The Court also stated that the basic type of offence should *ex definitione* serve in the majority of cases as the basis for criminal liability and that the approaches represented by both lower instance courts may mean that nearly all cases of behaviours involving possession of illicit drugs or psychotropic substances in violation of the law will be assessed as qualified offences based on the amount of narcotics. In justification of its position, the Supreme Court also made reference to relevant regulations in other European countries, giving examples regarding marijuana. It stated that "Although it is obvious that these regulations are in no way binding on Polish courts, nonetheless when making interpretations of national regulations it is sometimes well-justified to reflect on assessments accepted in other systems of jurisprudence of the same cultural background".

It is the opinion of the author of this paper that the Supreme Court in the verdict presented above has essentially retreated from the until now consistently maintained line of reasoning in case law regarding what constitutes ‘a considerable quantity’ of narcotics. This new view, expressed in the verdict cited, is correct and deserves general approbation. It should certainly be assessed positively in terms of abandonment of the criterion of several dozen portions. It should, however, be assessed negatively inasmuch as it makes reference in the determination of ‘a considerable quantity’ to the intended purpose of the narcotics. It must be stated that this verdict was delivered by a three-person composition of the Supreme Court, and thus it represents the views of three judges. Time will tell if this verdict will be an isolated divergence from the current line of case law reasoning, or whether other judges of the Supreme Court will accept the view expressed in it. It is to be hoped that this verdict will become the germ of a new line of case law of the Supreme Court regarding the interpretation of the notion of ‘a considerable quantity’ of narcotics, and that the view expressed in this verdict abandoning the criterion of several dozen portions will be universally accepted in the case law of Polish courts.

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