

Summary of Ph.D. dissertation

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Branch of science: Social Sciences

Field of study: Jurisprudence

Thesis title: Insurance company as an aggrieved party under Article 49 § 3 of the Code of Criminal Procedure

The position of an insurance company acting as an aggrieved party in criminal proceedings is unusual under the provisions of the Code of Criminal Procedure. The insurance company may be aggrieved by law in two situations:

- 1) the insurance company undertaking as an aggrieved party pursuant to the provision of Article 49 § 1 of the Code of Criminal Procedure, i.e. in a situation where there has been a direct violation or threat to a legal interest by a crime, e.g. theft of property from the seat of an insurance company, the crime of insurance fraud (in this case, the individual subject of protection is the economic interest of the insurance company);
- 2) the insurance company undertaking as an aggrieved party pursuant to the provision of Article 49 § 3 of the Code of Criminal Procedure, i.e. in a situation of indirect harm to the insurance company as a result of the contract between insurance company and the victim, under which insurance company was obliged to cover the damage caused by the crime.

The considerations undertaken in this doctoral dissertation focus on three main areas:

1. first of all, the concept of the insurance company and the conditions for its participation as an aggrieved party under the provision of Article 49 § 3 of the Code of Criminal Procedure,
2. the right of the insurance company as an aggrieved party pursuant to the provision of Article 49 § 3 of the Code of Criminal Procedure to a fair criminal trial,
3. moreover analysis of the rights that the insurance company undertaking as an aggrieved party under Article 49 § 3 of the Code of Criminal Procedure may

implement in criminal proceedings, with particular emphasis on the issue of pursuing recourse claims by the insurance company in this process.

The considerations undertaken in this doctoral dissertation are intended to answer the following research questions:

1. What is the subjective scope of the term "insurance company" on the basis of Article 49 § 3 of the Code of Criminal Procedure?
2. What were the reasons for introducing the regulation in which the insurance company can participate in criminal proceedings as an aggrieved party to the extent that it covered the damage caused to the victim by the crime or is obliged to cover it?
3. Should the insurance company have the right to a fair criminal trial as a "special" entity that does not have to, pursuant to Article 49 § 3 of the Code of Criminal Procedure, demonstrate a direct violation or threat to its legal interest by a crime?
4. Do the insurance companies, which are the aggrieved party in criminal proceedings pursuant to Article 49 § 3 of the Code of Criminal Procedure, have the same scope of rights as the victims under Article 49 § 1 of the Code of Criminal Procedure?
5. What kind of recourse claims may be pursued by the insurance company in criminal proceedings based on the Article 49 § 3 of the Code of Criminal Procedure?
6. Does the provision of Article 49 § 3 of the Code of Criminal Procedure should be retained in the Code of Criminal Procedure in its current form?

In relation to the above research questions, the following research hypotheses should be indicated:

1. The term "insurance company" included in the provision of Article 49 § 3 of the Code of Criminal Procedure should be understood as both all insurance companies, as well as Insurance Guarantee Funds and Polish Motor Insurers' Bureaus.
2. The main reason for introducing the regulation enabling the insurance company undertaking to participate in criminal proceedings as an aggrieved party to the extent that it covered the damage caused to the victim by the crime or is obliged to cover it was the position of the insurance company in the political system prevailing at the time of introducing this provision to the Code of Criminal Procedure of 1969.
3. The insurance company as an aggrieved party pursuant to the provision of Article 49 § 3 of the Code of Criminal Procedure should have the right to a fair trial.

4. The insurance companies, which are the aggrieved party in criminal proceedings pursuant to Article 49 § 3 of the Code of Criminal Procedure, have the same scope of rights as the victims under Article 49 § 1 of the Code of Criminal Procedure.
5. The scope of rights of the insurance company as an aggrieved party pursuant to the provision of Article 49 § 3 of the Code of Criminal Procedure should be the same as the scope of the rights of the victim under Article 49 § 1 of the Code of Criminal Procedure.
6. Under the provision of Article 49 § 3 of the Code of Criminal Procedure the insurance company may pursue only recourse claims of a typical nature in criminal proceedings.
7. The provision of Article 49 § 3 of the Code of Criminal Procedure should be maintained, however, on its basis, the possibility of participating in criminal proceedings as an aggrieved party should only be granted to the insurance company which is entitled to recourse claims of a typical nature.

The doctoral dissertation consists of four main chapters in which is the answer to the question whether the provision of Article 49 § 3 of the Code of Criminal Procedure should be retained in the Code of Criminal Procedure in its current form. This dissertation contains theoretical considerations, which have already been partly discussed by the doctrine and have been presented in the literature so far. The current legal regulations are also analyzed, as well as the jurisprudence of Polish courts regarding the issue of the participation of the insurance company in criminal proceedings pursuant to Article 49 § 3 of the Code of Criminal Procedure and the case law of the European Court of Human Rights and the Polish Constitutional Tribunal in the context of the right of the aggrieved insurance company to a fair criminal trial.

The first chapter is an introduction to more detailed considerations related to the participation of the insurance company in criminal proceedings on the basis of Article 49 § 3 of the Code of Criminal Procedure. In this part of the doctoral dissertation, it was important to indicate basic concept such as "insurance company". The analysis undertaken in this chapter also concerned the notion of the victim, which was used by the legislator in the provision of Article 49 § 1 of the Code of Criminal Procedure. The first chapter also discusses issues related to the evolution of the status of the insurance company as an aggrieved party in criminal proceedings, in order to indicate what factors influenced the introduction of the regulation under which the insurance company is considered an aggrieved party to the extent to which it covered the damage caused to the victim by a crime or is obliged to cover it.

The second chapter is devoted to the issue of the right of the aggrieved insurance company to a fair criminal trial. The considerations begin with determining the features of a fair criminal trial. They are the starting point for the analysis of not only national regulations, but also the provisions of international law defining the right to a fair criminal trial. In this part of the work, the answer is given to the question whether the aggrieved insurance company has the right to a fair criminal trial under the current legal order. This is an important issue, because it should be emphasized that the right to a fair trial, which has been guaranteed in the regulation of Article 6 of the European Convention on Human Rights, serves primarily to protect the interests of the accused in criminal proceedings. Therefore, it was necessary to determine whether there are regulations on the basis of which the aggrieved insurance company may invoke the right to a fair criminal trial.

The third chapter is a detailed analysis of the rights that the insurance company is entitled to as an aggrieved party in criminal proceedings under the provision of Article 49 § 3 of the Code of Criminal Procedure in both – pre-trial and court proceedings. In the case of the second stage of the criminal trial, there are situations in which the insurance company acts as an auxiliary prosecutor and those cases in which the insurer remains only an aggrieved party and is not a party to court proceedings. When considering issues related to the insurance company's rights in criminal proceedings, factors that may affect the scope and real possibility of exercising the rights of the insurer as an aggrieved party were taken into account. It should be mentioned here, e.g.: the lack of a direct violation or threat to a legal interest by a crime, the fact that the insurance company is a legal person or the reasons for which the insurance company decides to participate in criminal proceedings as an aggrieved party.

The fourth chapter deals with an important issue, which is the pursuit of civil law claims by an insurance company in criminal proceedings on the basis of the provision of Article 49 § 3 of the Code of Criminal Procedure. This issue is extremely important due to the fact that the insurance company may be entitled to recourse claims of both typical and atypical nature. Therefore, it was necessary to answer the question of what kind of recourse claims may be pursued by the insurance company in criminal proceedings under the provision of Article 49 § 3 of the Code of Criminal Procedure. This issue is also important due to the fact that there are opposing views in this regard in the literature. The fourth chapter also discusses the obligation to repair the damage by the perpetrator of the traffic accident in the context of the insurance company's obligation to repair the damage under the TPL insurance of motor vehicle owners and the *ex-gratia* payment and its impact on the status of the

insurance company as an aggrieved party under the provision of Article 49 § 3 of the Code of Criminal Procedure.

Individual issues have been analyzed from the basic, of a general nature, to the most detailed and characteristic for the insurance company that participates in criminal proceedings as an aggrieved party under the provision of Article 49 § 3 of the Code of Criminal Procedure. All the considerations undertaken in this doctoral dissertation allowed for the formulation of *de lege ferenda* postulates, including the presentation of proposals for legislative changes regarding the participation of the insurance company in criminal proceedings.

The analysis of individual issues in this doctoral dissertation is mainly based on a dogmatic and theoretical nature, which contributed to a detailed study of the current legal status related to the subject of the work. This research method indicated above made it possible to formulate final conclusions, including *de lege ferenda* postulates. In addition to the dogmatic method, in order to present the development of the status of the insurance company as an aggrieved party in criminal proceedings, was used the historical method. In this doctoral dissertation was used also the empirical method in the field of file researches in the Kuyavian-Pomeranian Voivodeship, which show when in court proceedings conducted by criminal divisions of courts in first instance in the years 2016-2020, insurance companies participated as an auxiliary prosecutor or aggrieved party (pursuant to the provision of Article 49 § 3 of the Code of Criminal Procedure).

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