Combatting drug crime (along with economic and criminal crime) is one of the most important challenges for law enforcement agencies. The production, smuggling, and marketing of drugs bring huge profits to criminal groups, which has led to the most rapidly growing branch of organised crime. When analysing police statistics, it should be noted that since 2014, there has been a successive increase in crimes systematised in the Law of July 29, 2005 on Counteracting Drug Addiction. In 2014, 49,718 criminal behaviours were identified, in which the basis for the legal qualification of the act was the criminal provisions of the cited law, while in 2021, this number increased to 62,204. The fact that success in combatting criminal groups whose scope of criminal activity is based on the ‘drug business’ largely begins with the apprehension of a retail customer in possession of prohibited substances cannot disappear from view. The indicated behaviour of possession of both narcotic drugs and psychotropic substances is systematised in the provision of Article 62 (1) of the Law on Counteracting Drug Addiction. There is no doubt that according to the Regulation of the Minister of Health of August 17, 2018 on the list of psychotropic substances, contact with the author through the editor.

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narcotic drugs and new psychoactive substances, the legislator listed 246 psychotropic and psychoactive substances and 230 narcotic drugs. Taking into account professional experience, police statistics and dogma, it should be pointed out that, as a rule, the largest number of detained offenders are those in possession of marijuana and amphetamines. The reason for the infamous popularity of these two drugs, on the one hand, is the price, which in the case of marijuana is 50 PLN per gram, and in the case of amphetamine is 20 PLN per gram (the price quoted is for retail purchase; by purchasing 1 kilogram, the price per gram of amphetamine is reduced to 4 PLN) as well as the availability of these substances on the ‘market’. The success of both police officers from provincial/municipal and district police headquarters and from the Central Bureau of Investigation of the Police in combating criminal groups is due to information obtained from informants, operational activities, as well as the knowledge obtained from prevention police officers duty who apprehend persons in possession of narcotic substances. Despite the different scale of operations – both of prevention officers and police officers of criminal divisions – the drawn up procedural and non-procedural documentation both when revealing a gram of a drug and a kilogram should, as a rule, be the same. Analysing the studied issues in the field of drug crime in its broadest sense, it is necessary to answer the questions: what extra-procedural activities are systematised in the current legal system? What extra-procedural activities are performed to reveal drug substances? What procedural activities has the legislator endowed law enforcement agencies with and what should be performed when drug substances are disclosed? To answer the research problems posed in this way, the author used the dogmatic-legal method, which will lead to constructive conclusions in a reliable and in-depth manner. By subjecting the current state of the law to analysis, the author aims to highlight the legislative array of legal tools to effectively combat drug crime.

Non-trial activities to reveal drug substances

The elimination of drug crime is directly linked to statutory tools found in the Code of Criminal Procedure and in special laws, among which

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5 Rozporządzenie ministra zdrowia z 17 sierpnia 2018 w sprawie wykazu substancji psychotropowych, środków odurzających oraz nowych substancji psychoaktywnych (DzU, 2018, item 1591).


8 Ustawa z 6 czerwca 1997 - Kodeks postępowania karnego (consolidated text, DzU, 2023, item 818), hereinafter referred to as: Code of Criminal Procedure.
we can include the Police Act,⁹ the Aviation Law,¹⁰ the Border Guard Act¹¹ and the Prison Service Act.¹² Analysing the activities that officers of various services are authorised to perform, a distinction should be made between both procedural activities, consisting of a search or seizure of items, as well as non-procedural activities in the form of a personal inspection and preventive check. Personal control, which is one of the basic administrative and law enforcement activities, is regulated in the provision of Article 15, para. 1 of the Law on Police. The normative content of the provision with regard to the drug subject under review indicates that the material premise for personal control and reviewing the contents of luggage and checking cargo in ports and stations and means of land transportation is a reasonable suspicion of the commission of a criminal offense, as well as finding items whose possession is prohibited. Another rationale for a personal inspection, with regard to drugs, is finding items that may constitute evidence in proceedings conducted in connection with the statutory task of detecting crimes and prosecuting their perpetrators. The second of the indicated administrative-order activities is the preventive check normalised in the provision of Article 15(1)(9) of the Police Law. The indicated activity also involves inspecting a person, his or her clothing, and objects in his or her possession. The difference in the analysed activities is indicated by the order in which it is carried out. Conducting a personal inspection or search is, as a rule, carried out first, with implementing the statutory prerequisites authorising these actions. On the other hand, a preventive check, as a rule, is of a secondary nature and is carried out in relation to persons brought in and admitted to rooms for detainees (hereinafter: PDOZ), temporary rooms, or police children’s chambers (hereinafter: PID). Accordingly, the preventive check is a check against a previously performed activity. There is no doubt that technically, a personal check is an activity similar to a search. In the former state of the law and the current state, one of the prerequisites for a personal check is a reasonable suspicion of the commission of a criminal offense. The nature of this activity is direct and is a reaction to a criminal act that has been committed, or there is a reasonable suspicion that a person is aiming to commit one.¹³ The direct effect of the activity under scrutiny is finding certain items, the collection of which is necessary to ensure security or public order, and the policeperson’s decision-making autonomy allows rapid action in the course of official activities.¹⁴ Among the behav-

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⁹ Ustawa z 6 kwietnia 1990 o Policji (consolidated text, DzU, 2023, item 171), hereinafter referred to as: Police Act.
¹⁰ Ustawa z 6 lipca 2002 - Prawo lotnicze (consolidated text, DzU, 2002, No. 130, item 1112).
¹¹ Ustawa z 12 października 1990 o Straży Granicznej (consolidated text, DzU, 2023, item 1080).
¹² Ustawa z 9 kwietnia 2010 o Służbie Więziennej (consolidated text, DzU, 2023, item 1053).
iours that give rise to a personal inspection, actions such as throwing away a wrap or string bag at the sight of a passing police patrol and putting one in one’s underwear can be mentioned. On the other hand, from the perspective of the second premise, which is finding prohibited items, the basis for a personal inspection will be: a sudden change in the direction of walking on sighting a police patrol, the presence of people in the late evening in a vacant lot, entrance gate or forest parking lot. Next, the conduct of a personal inspection, in accordance with the provision of Article 15d (1) (10) of the Police Law, requires the preparation of an optional inspection protocol (in the event of such a request by the inspected person, and obligatorily upon the discovery of weapons, explosives or narcotics, psychotropic substances and their precursors). As indicated, personal inspection belongs to administrative and orderly activities aimed at revealing narcotic drugs. The drawing up of a protocol for this activity only indicates the direction of further proceedings.

Process steps to reveal and secure drug substances

The activity that allows the criminal process to enter the path of securing the disclosed means is the seizure of found items or a search. The seizure of objects, an activity that is the first of the possible security procedural actions, is regulated by the provision of Article 217 of the Code of Criminal Procedure. According to the statutory wording of the provision, objects that may constitute evidence in a case are subject to detention. The normative development of this statutory premise is found in the Rules of Internal Office of the Common Organizational Units of the Public Prosecutor’s Office in the provision of Article 159 in fine. The legislator indicates that the objects that can constitute evidence in a case are objects whose possession without permission is prohibited.

The presented action of detaining things can be divided into two phases. The first is a request by the authorised procedural authority for the voluntary surrender of an item by a person who is reasonably suspected of having such an item in his or her possession. In the event that the person refuses to voluntarily surrender the object, the second phase takes place, consisting in the forcible collection of the object. In the procedure of the personal control-retention of objects, it should be emphasised that the surrender of objects will be voluntary both during the physical surrender of objects and non-coercive submission to personal control, as a result of which drug substances are revealed and then detained under the provision of Article 217 of the Code of Criminal Procedure. In the indicated situation, despite the action of the officer, under Article 308 of the

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15 Obwieszczenie ministra sprawiedliwości z 18 maja 2017 w sprawie ogłoszenia jednolitego tekstu rozporządzenia ministra sprawiedliwości — regulamin wewnętrzny urzęduowania powszechnych jednostek organizacyjnych prokuratury (DzU, 2017, item 1206).
Code of Criminal Procedure, approval of this action by the prosecutor is not required. A similar situation will occur in the case of forcible seizure of objects both in terms of personal inspection and seizure of objects, with the difference that in such a case, the legislator imposes the obligation for the prosecutor or the court to approve the action.

It is worth noting that the legislator does not limit the circle of persons from whom objects may be detained. Therefore, an officer is also allowed to carry out the investigated procedural action. Such a situation may occur at the time of a person in possession of narcotic drugs or psychotropic substances throwing them away at the sight of police officers.

The second of the procedural actions for securing the revealed prohibited substances is a search. A search, as Justyna Karaźniewicz rightly points out, is an activity involving a thorough inspection of a person, elements of his or her clothing, including a thorough check of seams, cuffs, heels, parts of clothing, as well as any objects in their possession. In terms of searching a person, this activity includes a thorough check of all areas of the body, including checking the nooks and crannies and openings of the body. It should be agreed that personal inspection largely overlaps with the technical but not functional scope of a search. The identification of the indicated activities in terms of interference in the sphere of individual rights is reflected in the case of the performance of the activity in relation to the person and prima facie means of land, air and water transportation. The presented activity in its unlimited local scope from a functional point of view is significantly expanded in relation to personal inspection, which applies only to a person or inspection of the contents of luggage and checking of cargo in means of transport. The normative term ‘other places’, allows you to come to the conclusion that a search can be carried out in any place where there is reason to believe the presence of objects that may constitute evidence in the case. Undoubtedly, such places will include an apartment, garage, utility room or basement. On the background of the analysed activities, one can come to the conclusion that the disclosure of narcotic drugs as a result of personal inspection, consecutively their seizure gives grounds for conducting a search of a person. At this point, it should be emphasised that it would be wrong to initiate a search as soon as prohibited drugs are revealed as a result of a personal inspection, disregarding the detention of the objects. Disregarding the act of detaining things would lead to a procedural vacuum between the personal inspection and the search. On the other hand, personal inspection, despite its technical similarities, belongs to administrative-procedural actions and search to procedural actions, which clearly excludes the possibility of absorption of the present actions.

The material premise of a search is the supposition (expectation) that there are prohibited items in the place of the search or with the person, in this case narcotics or psychotropic substances. The premise under examination is characterised by a tip-off, however, it must correspond with

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a reasonable basis, which should be based on the collected procedural or operational material. In a dogmatic light, the interpretation of ‘grounds for search’ is identified, as a rule, with the obtained procedural evidence.\textsuperscript{18} There is no doubt that in the analysed example of a search of a person in the configuration of personal inspection – seizure of items, the basis for conducting a search will be the fact of the discovery of prohibited tools during the performance of personal inspection. The basis for carrying out the investigated procedural action with the omission of personal control will be the collected operational material corresponding with the information obtained from the informant, observation as well as operational control. The basis for carrying out this activity is the decision of the court or prosecutor, and in urgent cases the order of the head of the unit or the officer’s service card.

The normative content of the provision of Article 159 of the Rules of Procedure of the Common Organizational Units of the Public Prosecutor’s Office,\textsuperscript{19} \textit{in principio} indicates that the things that may constitute evidence in a case and are subject to detention are those that served or were intended for the commission of a crime. In the context of the criminal provisions criminalising the possession of narcotic substances in violation of the law, it should be emphasised that items used to commit a crime will be things that contain narcotic drugs, psychotropic substances or new psychoactive substances. Immanently, the most common ‘packages’ may include string or plastic bags or aluminium foil. At this point, it should be emphasised that in cases of crimes under Article 62(1) or (3) of the Law on Counteracting Drug Addiction, psychotropic drugs or narcotic substances may be irretrievably consumed in the course of performing specialised tests for forensic opinion. Material evidence is limited to the designated objects used to commit these acts.\textsuperscript{20} Consecutive systemic norms unambiguously regulate the forfeiture of both prohibited substances – Article 70(2) of the Law on Counteracting Drug Addiction – as well as the forfeiture of objects used to commit a crime – Article 44§2 of the Law of June 6, 1997 – Penal Code.\textsuperscript{21} In terms of the subject matter under examination, there is no doubt that an object used to commit a crime systematised in the provision of Article 62(1) or (3) of the Law on Counteracting Drug Addiction will be a bag,\textsuperscript{22} a bundle or any other type of packaging not expressing a greater material value.\textsuperscript{23} In the case of seizure of an item used


\textsuperscript{19} DzU, 2017, item 1206, footnote 15.

\textsuperscript{20} Gensikowski P, Instytucja przewidziana w art. 62a ustawy o przeciwdziałaniu narkomanii a orzeczenie przepadku, Prokuratura i Prawo 2013, No.2, p. 38.

\textsuperscript{21} Ustawa z 6 czerwca 1997 - Kodeks karny (DzU, 1997, No. 88, item 553 as amended), hereinafter referred to as: Penal Code.

\textsuperscript{22} Wyrok SA w Katowicach z 29 grudnia 2011, ref. II AKa 498/11, KZS 2012/4, item 70.

\textsuperscript{23} Wyrok SA w Lublinie z 20 stycznia 2004, ref. II AKa 390/03, KZS 2005, No. 1, item 30.
to commit a crime stipulated in Article 62 paragraph 1 or 3 of the Act on Counteracting Drug Addiction in the form of a safe, a precious casket or other item of household use, the court, pursuant to Article 44§3 of the Penal Code, may instead of forfeiture order a surcharge in favour of the State Treasury, if the forfeiture is disproportionate to the gravity of the crime committed.

Forfeiture, as a measure of economic annoyance, requires determining the value of the object used to commit the crime. According to Marek Kulik, the amount of the surcharge may not exceed the value of the object that would be the subject of forfeiture. A similar view was also expressed by Violetta Konarska-Wrzosek and Jerzy Lachowski. The authors point out that the reference adjudicated under Article 44§3 of the Criminal Code may not even be equal to the value of the instrumentalities of the crime, and must be correspondingly less. Estimating the value of the object used to commit the crime is not a difficulty, but comparing it with the value of the prohibited substances seems to be a difficult matter due to the prohibited nature of its possession. In jurisprudence, one can encounter the view that the value of the drug is taken as the price of the drug in the vicinity of the municipality or city. The average value of a narcotic drug or psychotropic substance can be established both as a result of evidence from witness testimony regarding the purchase or sale price of such a drug, as well as operational information. Drug prices in different provinces are not the same, but regarding the most popular drugs, the price per gram of amphetamine can be averaged at PLN 20, while marijuana at PLN 50. There is no doubt that there may be a situation in which the object used to commit a crime regulated by Article 62(1) or (3) of the Law on Counteracting Drug Addiction will be the suspect’s means of transportation in the form of a car or motorcycle. In such a case, securing the item in its entirety is not justified both in terms of procedural economy and the principles of sound reasoning. It seems sufficient to draw up an inspection protocol, take photographs and collect forensic traces.

It is important to pay attention to the situation in which it turns out that the objects seized in preliminary proceedings have no connection with the acts charged and subsequently attributed to the accused and do not have the attribute of material evidence within the meaning of the applicable criminal procedure and cannot gain such an attribute due to the groundless recognition of them as material evidence. In view of the above, it seems necessary to issue an order under the provision of Article 230§2

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26 Wyrok SA w Białymstoku z 15 września 2020, ref. II AKa 27/20.
27 Trynda A, Duszyńska A, Aktualne tendencje dotyczące czystości, działek i cen najbardziej popularnych w Polsce narkotyków, Problemy kryminalistyki 2019, No. 4.
28 Młynarczyk Z, Przeszukiwanie i odebranie przedmiotów w postępowaniu karnym, Prokuratura i Prawo 1996, No. 4, p. 106.
of the Code of Criminal Procedure on the redundancy of the item in criminal proceedings.\textsuperscript{29}

There is no doubt that the disclosure of narcotic drugs, as a rule, correlates with the detention of a person under Article 244 of the Code of Criminal Procedure. The function of detention specified in the indicated provision is to secure the proper course of criminal proceedings by preventing the suspect from evading justice by hiding or obliterating traces of the crime or bringing the suspect to the prosecutor.\textsuperscript{30}

Taking the presented procedural actions immanently leads to the initiation of criminal proceedings for an act under the Law on Counteracting Drug Addiction. The actions taken by the procedural authorities at the pre-trial stage must be carried out through the prism of the principles of criminal procedure. The key principle of the criminal process is the principle of material truth, codified in the provision of Article 2 § 2 of the Code of Criminal Procedure. Trial authorities are obliged to make truthful findings of fact, which form the basis of every decision and every procedural decision.\textsuperscript{31} As the Supreme Court points out, the principle of material truth, formulated in Article 2 § 2 of the Code of Criminal Procedure, introduces in the criminal trial the requirement to base any decision on truthful findings of fact, but it is understood by them to mean proven findings, i.e. such findings for which, in light of the evidence uncovered, a fact contrary to proof is impossible or highly improbable. The obligation to prove, however, applies only to findings unfavourable to the accused, as he or she enjoys the presumption of innocence (Article 5 § 1 of the Code of Criminal Procedure), and doubts that cannot be removed are resolved in his or her favour (Article 5 § 2 of the Code of Criminal Procedure).\textsuperscript{32} The presented principle is implemented by the trial authorities through the initiative of evidence expressed in the provision of Article 167 of the Code of Criminal Procedure. The important activities directed at learning the truth and establishing the facts\textsuperscript{33} are both the reweighing of the secured prohibited substance and its examination. The protocol of weighing requires indicating the time and place at which the activity was performed and specifying the type of device used to weight the object and the object’s weight. The activity of using a drug tester also requires a protocol form, taking into account the type of tester used, the purpose of the test, and the course of its use. The actions undertaken can consequently lead to the issuance of an order to present a charge for an act systematised in the Law on Counteracting Drug Addiction.

\textsuperscript{29} Wyrok SA w Białymstoku z 28 marca 2013, ref. II AKa 28/13, Lex No. 1313216.
\textsuperscript{30} Skorupka J, Zatrzymanie procesowe osoby podejrzanej, Prokuratura i Prawo 2007, No. 11, pp. 17–18.
\textsuperscript{31} Kowalewska-Borys E, Prekluzja dowodowa w procesie karnym na przykładzie przepisu art. 170§1 pkt 5 kpk, Białostockie Studia Prawnicze 2010, No. 7, p. 299.
\textsuperscript{32} Postanowienie SN z 18 grudnia 2008, ref. V KK 267/08, Lex No. 485030; See also: Wyrok SN z 28 marca 2008, ref. III KK 484/07, Lex No. 370249.
\textsuperscript{33} Wyrok SR w Słupsku z 13 grudnia 2016, ref. XIV K 431/15; Wyrok SO w Krośnie z 6 grudnia 2016, ref. II k 28/16.
Conclusion

The analysis of the current legislation gives grounds for formulating the thesis that the legislator has equipped law enforcement agencies with ‘tools’ to effectively combat drug crime. The shape of the studied provisions de lege lata allows one to come to the conclusion that the powers of law enforcement agencies both in terms of personal inspection, seizure of belongings and searches allow the initiation of criminal proceedings aimed at eliminating prohibited substances from society and bringing to criminal responsibility perpetrators who violate the provisions of the Law on Counteracting Drug Addiction. Consistently, through legal instruments, law enforcement agencies implement the principle of material truth by means of the evidentiary initiative, which is a constitutive action that makes it possible, as a consequence, to issue a decision on the presentation of a charge. The systematisation of normative solutions leads to the reliable conduct of proceedings in rem and ad personam for acts criminalised in the Law on Counteracting Drug Addiction. Formulating de lege ferenda conclusions, it should be pointed out that the legislator, while limiting the circle of administrative-order activities to personal inspection and inspection of the contents of luggage and checking of cargo, did not take into account the inspection of means of transport. The above-mentioned activity with respect to vehicles places a legislative barrier on checking the vehicle without initiating a search. The legislator equates a search of a person or an apartment with a search of a vehicle, which, in the author’s opinion, does not constitute a significant interference with the autonomy of the vehicle’s disposer. Drivers or passengers in the period between the issuance of the order to stop the vehicle and the action taken by the officer have time to conceal the narcotics, the disclosure of which would require the search to be undertaken. A change in the legislation providing the possibility of checking the means of transportation would be an invaluable tool in the fight against drug crime.

The fact that, globally, the fight against drug crime represents a tangible benefit not only in legal terms but also in social, economic and sociological terms cannot disappear from view.

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Keywords: search, personal control, drugs, forfeiture, evidence

Summary: Combatting drug crime is one of the most important challenges facing law enforcement agencies in the modern world. The infamous popularity of prohibited drugs, in particular amphetamines, but also marijuana, is due to their availability and unaffordable price. Eliminating the indicated threat requires law enforcement agencies...
to do diligent operational work and make comprehensive use of the legal tools provided by the legislator. Taking the right actions, both procedural and non-procedural, leads to the substantive conduct of criminal proceedings in rem and ad personam. In the article presented here, the author analysed the current state of the law in terms of possible procedural and extra-procedural actions to reveal and secure drug substances. Another relevant element of this article is the indication of activities aimed at collecting comprehensive evidence, in accordance with the principle of material truth, which is a constitutive principle of criminal proceedings. The analysis carried out allows us to come to the conclusion that, globally, combatting drug crime is a tangible benefit not only in legal terms but also in social, economic and sociological terms.

**Palabras clave:** registro corporal, control personal, drogas, decomiso, evidencias

**Resumen:** La lucha contra la delincuencia relacionada con las drogas es uno de los retos más importantes a los que se enfrentan las fuerzas policiales en el mundo moderno. La infame popularidad de las drogas prohibidas, en particular la anfetamina, pero también el cannabis, se debe a su disponibilidad y a su precio inasumible. La eliminación de la amenaza mencionada requiere que las fuerzas policiales lleven a cabo un trabajo operativo diligente y hagan un uso exhaustivo de las herramientas legales proporcionadas por el legislador. La realización de actividades adecuadas, tanto procesales como no procesales, lleva al desarrollo fáctico de los procedimientos penales in rem y ad personam. En el artículo presentado, el autor analizó la situación jurídica actual desde el punto de vista de las posibles de las actuaciones procesales y extraprocesales encaminadas a divulgar y asegurar las sustancias estupefacientes. Otro elemento importante del presente artículo es señalar las actividades encaminadas a la recopilación de pruebas exhaustivas de conformidad con el principio de verdad material, que es un principio constitutivo del proceso penal. El análisis lleva a la conclusión de que, en términos globales, la lucha contra la delincuencia relacionada con las drogas supone un beneficio tangible no sólo desde el punto de vista jurídico, sino también social, económico y sociológico.