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Legal Nature of Appeals in Polish Civil Proceedings

ABSTRACT

The analysis of the characteristic features of appeals in civil proceedings in Poland gives a way to the conclusion that the system of these measures is extensive. The proper regulation of legal remedies system is important to preserve the right to a court. This is determined by the characteristics of these remedies. The article discusses the most important features, thus, it can be concluded that inadequate regulation of legal remedies mostly concerns the decisions, as the legislator introduced a horizontal complaint (at the expense of the horizontal complaint) too broadly. In certain respects, this standardisation violates the principle of instantiation, which should be the rule.

Keywords: Legal remedy, right to a court, devolution, vertical and horizontal complaints.

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I. Introduction

The appealability of judgments is one of the basic elements of the right to a court, as it allows for their review and elimination of judgments from legal circulation while the judgments are contrary to the law, erroneous or unjust in the public perception. This is because it is assumed that judges adjudicating at higher instances, have greater legal knowledge, professional and life experience. Besides, their reasoning is more logical and they are guided by a stronger sense of justice. It is important, however, that the legal remedies system is established by each state for there is no uniform standard in this respect. As a result, it is regulated differently in various legal systems, even in case of common or similar elements. In particular, it applies to the decisions' catalogue that may be subject to appeal and remedies that may be brought.

In the Polish civil proceedings, the appeals system is very extensive. Each appeal can be characterised by different criteria, but the rule is that a judgment may be subject to one appeal only (the so-called non-competitive appeal rule). It should be obvious to the party whether and how he/she may challenge a specific decision. In practice, however, many doubts arise in this area, particularly regarding complaints.

The purpose of the study is to indicate the basic features of the legal remedies and assess if they were properly shaped. It is extremely important, as the system of these remedies is quite elaborate, with the structure being relatively complex, which is especially the case when it comes to challenging orders.

II. The Principle of Contestability of Decisions

The contestability of decisions, although it is one of the basic assumptions of the right to a court and is considered a jurisdiction and feature of judicial decisions,[1] does not derive from international regulations. Therefore, it does not constitute a sanctioned standard of a fair trial. In particular, Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome, dated 4 November 1950,[2] says in its first sentence that everyone is entitled to a fair and public hearing within a reasonable period of time by an independent and impartial law-established tribunal defined by law when adjudicating on his civil rights and obligations. The Convention does not oblige Contracting States to establish appeal or cas-

[1] Zembrzuski T., Skarga kasacyjna. Dostępność w postępowaniu cywilnym, Warsaw, 2011, 162.

[2] Journal of Laws of the Republic of Poland of 1993, No. 61, item 284, as amended.

sation courts, but the guarantees of Article 6 ECHR must be respected there where such courts exist, e.g., to the extent that it should guarantee litigants an effective right of access to the courts for determining their "civil rights and obligations." How this provision applies to appellate or cassation courts depends on particular features of the proceedings in question and their totality in the national legal order, including the role of the cassation court in the national legal order, that must be taken into account.[3]

Besides, this requirement (the contestability of decisions) is not introduced by Article 47 of the Charter of Fundamental Rights of the European Union, dated 26 October 2012.[4] Only in Article 14(5) of the International Covenant on Civil and Political Rights of 19 December 1966,[5] the right of appeal to a higher court is guaranteed, but only to a person convicted of a criminal offence (to have the decision on guilt and punishment reviewed under the law). A similar provision is contained in Article 2 of Protocol No. 7 to the ECHR, drawn up on 22 November 1984 in Strasbourg.[6]

In one hand, it is pointed out that instanalisation of proceedings causes an additional guarantee of a correct (in procedural and substantive terms) decision contributing to fuller realisation of the right to a court. On the other hand, it leads to a prolongation of the proceedings' duration and significant increase in their costs having a negative impact particularly on the position of the weaker party.[7] It is also submitted that at least to some extent, any appeal proceedings constitute a repetition of the previous decision-making process, while not guaranteeing the avoidance of errors and omissions that may be committed by the second instance court.[8]

[3] See e.g.: judgments of the ECtHR: of 22 March 2007, application No. 8932/05, Siałkowska v. Poland, Legalis, § 103; of 12 January 2010, application No. 33539/02, Bąkowska v. Poland, Legalis, § 44.

[4] OJ EU C No. 326, 2012, 391.

[5] Journal of Laws of the Republic of Poland of 1977, No. 38, item 167.

[6] Journal of Laws of the Republic of Poland of 2003, No. 42, item 364. As Article 2 states: "(1) Anyone who has been found guilty of an offence by a court shall have the right to have his case heard by a higher court, both as to the verdict of guilt and as to the punishment. The exercise of this right, as well as its grounds, shall be regulated by law. (2) Exceptions to this right may be made in the case of minor offences, as defined by law, or in cases where a person has been tried in the first instance by the Supreme Court or has been found guilty and convicted as a result of an appeal against an acquittal by a court of first instance.".

[7] Zieliński A., Budzące wątpliwości przepisy Konstytucji o ochronie sądowej i ich wykładnia, in: Proces cywilny. Nauka, kodyfikacja, praktyka. Księga jubileuszowa dedykowana Profesorowi Feliksowi Zedlerowi, edited by P. Grzegorczyk, K. Knoppek and M. Walasik, Warsaw, 2012, 66.

[8] Grzegorczyk P., Dopuszczalność i kształt apelacji w postępowaniu cywilnym – perspektywy przyszłej regulacji z uwzględnieniem standardów konstytucyjnych i międzynarodowych, in: Postępowanie rozpoznawcze w przyszłym Kodeksie postępowania cywilnego, edited by K. Markiewicz and A. Torbus, Warsaw 2014, 221.

However, the instance-based model of judicial proceedings is widely accepted in the Eu member countries in criminal and broadly defined civil matters. Only few countries have chosen to explicitly or implicitly (by mentioning specific levels of courts) give a constitutional status to this principle (e.g. Article 25(4) of the Hungarian Constitution, Section 98 of the Finnish Constitution, Article 119 of the Bulgarian Constitution, Article 91 of the Czech Constitution).[9] In this connection, it is emphasised that in most countries the instancerity of judicial proceedings is understood as a natural rule, not requiring constitutional legitimacy.[10]

Relevant provisions are contained in the Constitution of the Republic of Poland. Each party has the right to appeal against judgments and decisions issued in the first instance and exceptions to this principle and the procedure of appealing are determined by law (Article 78 of the Constitution of the Republic of Poland). This constitutes the implementation of the principle stemming from Article 176(1) of the Constitution of Poland, according to which court proceedings are at least two-instance.

III. Systematics of Legal Remedies

"Legal remedies" shall be deemed to be all means provided by law for a party aggrieved in whole or part by a judicial decision to restrain the injustice or illegality of the decision[11] and thus producing adverse consequences for the applicant. A party or a participant of the proceedings (or possibly another entity) is therefore (in principle) in a position to initiate a procedure to review the judgment or decision rendered to eliminate the defective judgment or decision from the market. It is important to note that following the exclusivity principle, only one legal remedy can be available to an entity against a given type of decision. Therefore, there is no choice. It is therefore stressed that the legal remedies system should be designed in a way that it could exclude any possibility of their concurrence or competition.[12] However,

[9] Konstytucja RP, Tom II, Komentarz do art. 87–243, edited by M. Safjan and L. Bosek, Warsaw, 2016, art. 176, 4.

[10] See: Michalska-Marciniak M., Zasada instancyjności w postępowaniu cywilnym, Warsaw 2013, 40 et seq.

[11] Michalska-Marciniak M., Konstytucyjne podstawy środków zaskarżenia w prawie polskim, in: Wokół problematyki środków zaskarżenia w postępowaniu cywilnym, edited by M. Michalska-Marciniak, Sopot, 2015, 23.

[12] See e.g.: Bladowski B., Zażalenie w postępowaniu cywilnym, Cracow 2006, 37; Zembrzuski T., Komplementarność nadzwyczajnych środków zaskarżenia – skarga kasacyjna a skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia, in: Wokół problematyki środków zaskarżenia w postępowaniu cywilnym, edited by M. Michalska-Marciniak, Sopot, 2015, 239 et seq.

there are exceptions to this rule in the procedural law: for example, the decision on the costs of the proceedings may be challenged by a complaint (a formal measure) or by a measure challenging the decision on the merits, if the party challenges it on the merits (there is then no need to file a separate complaint).

The legal remedies for eliminating a defective court decision do not represent a uniform group.[13] Over the years, the legal remedies system evolved in Poland's[14] civil proceedings and this particularly applies to the complaints being subject to numerous modifications recently.

It is generally accepted to divide legal remedies (appeals) according to the following criteria:

(1) the judgment nature:

- **a.** ordinary – available against decisions that aren't final,
- **b.** extraordinary – available against final judgments;

(2) the court hearing the appeal:

- **a.** devolutive (appeals *sensu stricto*) – transfer the case cognizance to a higher court,
- **b.** non-devolutive (appeals *sensu largo*) – does not transfer the case cognizance to a higher court. It is cognized by the court which issued the contested decision;

(3) suspension of the contested decision:

- **a.** suspensive – suspends the execution of the contested decision,
- **b.** non-suspensive – does not suspend the execution of the contested decision;

(4) type of error that may lead to a challenge:

- **a.** complete – where the law does not limit the grounds on which they may be brought,
- **b.** incomplete – may rely only on the grounds indicated in the Act.

The legal remedy nature is determined primarily by the first three criteria and will be discussed later. The fourth subdivision coincides with the first one greatly. In that extraordinary remedies there are incomplete remedies, while ordinary remedies

[13] Hanausek S., System zaskarżania orzeczeń sądowych w nowym polskim postępowaniu cywilnym, Studia Cywilistyczne, No. 9, 1967, 141 et seq.

[14] Doubts have been expressed in the doctrine as to whether it's possible to speak of a system of legal remedies in Polish civil proceedings at all, and that the notion of a system of legal remedies is currently used traditionally rather than in the dictionary – see more fully: System postępowania cywilnego, Tom 5, Środki zaskarżenia, edited by A. Góra-Błaszczykowska , Warsaw, 2023, 7.

are, in principle, complete ones. They may be challenged on the basis of any defect, i.e. relating to both factual and legal grounds and concerning procedural and substantive law infringement.[15] The nature of a legal remedy is not also determined by the criterion of the outcome that may be achieved through consideration, i.e. review and cassation. For it is not possible to make a strict division in this respect, since even if a certain appeal is in principle of a revisional nature, i.e. it should aim to change the contested decision (reformatory ruling) like an appeal or a complaint, in certain cases it is possible to make a cassation ruling, i.e. to overturn the contested decision and refer the case for re-examination to a lower instance court or to formally end the proceedings (rejection of a lawsuit, discontinuance of proceedings).

IV. Ordinariness VS Extraordinary Nature of Appeals

Following Article 363 (1) of the Civil Procedure Code, a court decision is final if no means of appeal or other legal remedies are observed against it.

The legal remedies are thus distinguished as:

1/ the means of appeal: appeal and complaint;

2/ other legal remedies: objection against a default judgment, objection against a payment order under the writ of payment procedure, complaint against a decision of a court registrar, complaint against bailiff's actions, objections in enforcement proceedings.[16]

Some authors also report other legal remedies:

- an appeal against a decision of a pension authority,
- appeal against a decision of the UOKiK President and other Presidents (so-called market regulators).[17]

These are all ordinary legal remedies, as they are available in the course of an instance against non-final decisions of courts or other authorities. On the other hand, extraordinary remedies, i.e. the ones available against final judgments aiming to overturn them, are as follows: action for annulment of an arbitral award, application for

[15] An exception to this rule is provided for in Article 505^{9} (1^{1}) of the Code of Civil Procedure, according to which an appeal in summary proceedings may be based only on allegations of: (1) violation of substantive law through its misinterpretation or misapplication; (2) violation of procedural rules if it could have affected the outcome of the case.

[16] See e.g.: Dolecki H., Postępowanie cywilne. Zarys wykładu, Warsaw, 2007, 335; Jodłowski J., Resich Z., Lapierre J., Misiuk-Jodłowska T., Weitz K., Postępowanie cywilne, Warsaw, 2007, 471-472.

[17] Dolecki H., Postępowanie cywilne. Zarys wykładu, Warsaw, 2007, 335; Świeboda Z., Skarga jako środek zaskarżenia w postępowaniu o zamówienia publiczne, Przegląd Sądowy, No. 4, 2002, 65.

the resumption of proceedings, cassation appeal, extraordinary appeal and application for a declaration of the final decision invalidity.[18]

Beyond this division we see an extraordinary legal remedy, a special one (outside the course of proceedings)[19] – appeal for a declaration of unlawfulness of the final judgment (decision on the merits) of a second instance court ending case proceedings, if by its issuance a party was prejudiced, and it was not and is not possible to amend or set aside that judgment through other legal remedies available to a party under the Code. Exceptionally, when the unlawfulness results from the violation of fundamental principles of the legal order or constitutional freedoms or rights of a human being and citizen, the unlawfulness of the final judgment of a first or second instance court ending the case proceedings may also be required if a party did not use the legal remedies to which it is entitled, unless it is possible to amend or set aside the judgment by other legal remedies the party is entitled to (Article 424^1 (1) and 2 of the Civil Procedure Code).

As defined above, the obligation to ensure the final judgment challengin possibility does not derive from the EctHR case law, as it is not an implementation of the right to a court. A party is supposed to be able to challenge a judgment by ordinary means of appeal. Nevertheless, it should be remembered that if such a possibility is introduced in a given country (as it is in Poland), it must be real. Thus, the final judgment challenging premises should be constructed in a way ensuring the parties to know when they ca file an extraordinary appeal. In other words, the state is free to enjoy the possibility of challenging final judgments, but this freedom is limited.

The basic aspects of extraordinary legal remedies (including an appeal for a declaration of the final judgment unlawfulness) in civil proceedings in Poland:

1/ there are subject-matter barriers. They are not necessarily available in all cases (primarily a cassation appeal);

2/ there are subjective barriers (extraordinary complaint), i.e. it can be brought only by strictly defined entities (the Prosecutor General, the Ombudsman, the President of the General Prosecutor's Office of the Republic of Poland, the Ombudsman for Children, the Ombudsman for Patients' Rights, the Chairman of the Financial Supervision Commission, the Financial Ombudsman, the Ombudsman for Small and Medium-sized Entrepreneurs and the President of the Office of Competition and Consumer Protection);

[18] Asłanowicz M., Nadzwyczajne środki zaskarżenia w postępowaniu cywilnym, Warsaw, 2022, 29-20.

[19] Such remedies are defined as legal means by which a final judicial decision may be overturned (set aside) if it's affected by a specific defect. See: Osowy P., Systemy nadzwyczajnych środków zaskarżenia w prawie procesowym cywilnym w Europie – zagadnienia wybrane, Rejent 2004, No. 5, 87-89.

3/ they can only be brought on specific grounds (incomplete remedies);

4/ if they are brought before the Supreme Court, the so-called attorney-client privilege applies (Article 87[1] of the Civil Procedure Code) so that, apart from certain exceptions, a party cannot bring this measure independently but with the help of a professional attorney;

5/ a party bringing an action for a declaration of the final judgment unlawfulness (Article 424[1] of the Civil Procedure Code) is not required to show that it was not and is not possible to raise the contested judgment through an extraordinary action. Thus, the action is not subject to rejection[20] – this is a kind of exception to the rule that one decision may be subject to a single remedy.

V. Devolution VS Non-Devolution of Appeals

1. General Considerations

A judgment issuance (and in some cases an order) during civil proceedings is linked with the contestability and – in accordance with the constitutional principle – it applies to judgments of the first instance court (not only that, as we will discuss below). Referring to the Constitutional Tribunal jurisprudence, the doctrine[21] points out that the constitutional principle of two-instance court proceedings presupposes the following:

1) an effective access to the second instance court: the parties should be granted appropriate remedies that trigger the review of judgments issued by the first instance court;
2) entrusting the case hearing at second instance to a higher court (devolutive remedies);
3) appropriate shaping of the procedure before the second instance court to comprehensively examine the case and issue a substantive decision.

In the current state of the law, the instantionality principle shows significant deviations, which will be discussed below. Notaby, while statutory limitation of the appealability of judgements (including the limitation of devolutiveness) does not con-

[20] Resolution of 7 judges of the Supreme Court – legal principle of 15 October 2020, III PZP 4/20, Case law of the Supreme Court of Labour and Social Insurance Chamber (OSNP) 2021, No. 5, item 48.

[21] See: Michalska-Marciniak M., Konstytucyjne podstawy środków zaskarżenia w prawie polskim, in: Wokół problematyki środków zaskarżenia w postępowaniu cywilnym, edited by M. Michalska-Marciniak, Sopot, 2015, 26 et seq.

stitute a breach of Article 78 of the Polish Constitution, the appeal shaping with the exclusion of devolutiveness should be justified by important and objective reasons.

2. Devolutive and Non-Devolutive Complaints

The first exception is the the so-called horizontal (non-devolutive) complaint phenomenon, when the contested procedural decision (court decision or order of the presiding judge) is reviewed not by a higher, but the court that issued it, albeit in a different composition. A significant extension of this phenomenon was made by the Act of 4 July 2019, amending the Act – Code of Civil Procedure and certain other acts.[22] Currently, the following complaints can be distinguished:

- vertical complaint to the second instance court (Article 394 (1) of the Civil Procedure Code);
- horizontal complaint to the first instance court (Article 394^{1a} (1) of the Civil Procedure Code);
- horizontal complaint to the second instance court (Articles 394^{2} (1) and 1^{1} of the Civil Procedure Code);
- vertical complaint to the Supreme Court (Articles 394^{1} (1) and 1^{1} of the Civil Procedure Code)[23].

There is a solution that in trial proceedings a complaint is entitled if it is listed in a closed catalogue. Besides, the decisions being contestable by complaint are indicated in other proceedings. Besides, the above-given provisions are also applied accordingly in other civil proceedings than trial (Article 13 (2) of the Civil Procedure Code). Subsequent amendments to the Civil Procedure Code resulted in creating completely different categories of complaints, deviating from the classic approach to a complaint as a measure of devolutive character. While the appeal is not subject to changes (as far as the nature of this remedy is concerned), with regard to decisions being in principle ancillary (formal orders and, exceptionally, orders of the president), the legislator considered that the complaint proceedings should be accelerated without forcing the second instance court to deal with minor issues of little procedural importance and complexity.[24] Doing so, it is emphasised in the doctrine that, besides to the positive

[22] Journal of Laws of the Republic of Poland of 2019, item 1469, as amended.

[23] In view of the subject of the study, complaints, which are de facto means of initiating proceedings before the court, have been omitted; see more fully: System postępowania cywilnego, Tom 5, Środki zaskarżenia, edited by A. Góra-Błaszczykowska , Warsaw, 2023, 184-185.

[24] See: Explanatory Memorandum to the Draft Amendment, Parliamentary Paper No. 3137, 87.

aspects (shortening the complaint procedure duration, eliminating the case file transfer to the second instance court, delimitation of the competences of the courts of both instances while relieving the second instance court of the burden to resolve minor issues), horizontal complaints also show negative aspects (lack of an instance-based review of the decision, risk of consolidation of the views developed in individual courts on the principles of interpretation and application of the provisions[25]). It is therefore important the negative aspects not to outweigh the positive ones, as it may result in a departure from the principle of the right to a court in relation with the instance-based review of court decisions.

The Polish legislator expanded the system of horizontal complaints, although the principle still represents the vertical one. All this follows from Article 394 (4) of the Civil Procedure Code (which entered into force on 1 July 2023), saying that if a specific provision stipulates that a party is entitled to lodge a complaint against a court decision, but does not specify which court is to hear it, the complaint is heard by the second instance court. This rule was adopted unanimously in the jurisprudence of the Supreme Court, nevertheless it excludes interpretative doubts on the introduction of the horizontal complaint and moreover, resolves the problem of the so-called orphan complaints against decisions of the first instance court.[26] It follows from the fact that a horizontal complaint can be lodged only if a statutory provision ensures this.

It is also a consequence of the regulation defined in Article 394^{1b} of the Civil Procedure Code, according to which, if the order referred to in Article 394 (1) of the Civil Procedure Code is appealed against and simultaneouslythe order referred to in Article 394^{1a} (1) of the Civil Procedure Code, the complaint shall be heard by the second instance court. This is the conflict rule for vertical and horizontal complaints. It applies particularly to the decision to refuse giving reasons for the decision and serve it, which is indicated in Article 3941a (1(7)) of the Civil Procedure Code (as appealable by a horizontal complaint) and which simultaneously ends the case proceedings, if it concerns a decision ending the proceedings (e.g. on discontinuance of the pro-

[25] Biała M., Nowy model postępowania zażaleniowego ze szczególnym uwzględnieniem zażalenia poziomego – problemy praktyczne, Lex/el, 2020, point I.

[26] In ancillary proceedings and separate laws, there are provisions which provide for a complaint against a specific order of the court of first instance, but do not specify whether this is a vertical or horizontal complaint, e.g. Articles 547 (2), 551 (2), 554 (3), 556 (1) and 2, art 586^{1} of the Code of Civil Procedure etc; see more fully: Dziurda M., Charakter zażalenia na postanowienie sądu I instancji po nowelizacji KPC, Monitor Prawniczy, No. 11, 2021, 604 et seq.; Dziurda M., Nowelizacja Kodeksu postępowania cywilnego z 4.7.2019 r. w orzecznictwie Sądu Najwyższego, Monitor Prawniczy, No. 17, 2021, 897.

ceedings, on rejection of the claim). Article 394 (1) *in prinicipio* of the Civil Procedure Code applies, meaning that such a decision is subject to appeal to the second instance court following general rules.[27]

The decisions' catalogue of the first instance court and orders of the presiding judge, subject to appeal to the second instance court (Article 394 (1) of the Civil Procedure Code), can be divided into the following categories:[28] 1) court decisions or presiding judge's orders terminating the case proceedings (discontinuance of proceedings, rejection of a claim statement, return of a claim statement or a letter filed as a claim statement, which does not indicate a demand for the case examination); 2) orders relating to the transfer of the proceedings to another court (transfer of the case to an equal or lower court or taking up the proceedings in another mode); 3) orders resulting in a stay of proceedings (suspension of proceedings and refusal to take up suspended proceedings); 4) orders as to the content of a decision (rectification or interpretation of a decision or refusal to do so); 5) orders (orders) as to costs and fees (reimbursement of costs, determination of the rules for the parties to bear the costs of a trial, reimbursement of a fee or order to pay court costs – if a party does not file an appeal on the merits).

The decisions' catalogue on which a complaint to the same panel of the first instance court is ensured, is relatively broad (Article 394^{1a} (1) of the Civil Procedure Code). This catalogue is not entirely correct, for:

1) the refusal or withdrawal of exemption from court costs, refusal or withdrawal of the appointment of a lawyer and a motion dismissal to exclude a judge affect the procedural situation of the parties and their right to a fair trial;
2) the dismissal of an opposition to an intervener's intervention and an intervener's inadmissibility as a result of the opposition's allowance may have a significant effect on the trial;
3) sentencing a witness, expert, party, his/her attorney and third party to a fine, ordering a witness to be forcibly brought in and arrested and refusing to exempt a witness and expert from a fine and a witness from being forcibly brought in represent the order penalties.

[27] See decisions of the Supreme Court: of 15 December 2021, III CZP 89/20, OSNC-ZD (Case law of the Supreme Court of the Civil Chamber – Additional collection) 2022, No. 3, item 43; of 21 January 2022, III CZP 10/22, OSNC 2022, No. 6, item 63; resolution of the Supreme Court of 4 August 2021, III PZP 6/20, OSNP 2022, No 1, item 1.

[28] See too: Kodeks postępowania cywilnego. Komentarz, edited by A. Zieliński, Warsaw, 2022, art. 394, 3.

The decisions of the second instance court that may be appealed to another panel of that court, concern the following (art. 394^2 (1) and 1^1 of the Civil Procedure Code): the appeal rejections, rejection of the application for the proceedings' resumption, discontinuance of the proceedings caused by the appeal filing, exemption refusal from court costs or withdrawal of this exemption, refusal to appoint a lawyer or a legal adviser or their dismissal, motion dismissal for a judge exclusion, reimbursement of the trial costs, unless a cassation appeal is filed, reimbursement of the costs of unpaid legal aid provided *ex officio*, remuneration of an expert, mediator and witness fees, sentencing a witness, expert, party, his/her attorney and third party to a fine, refusal to give reasons for a decision and serve it, ordering compulsory import and arrest of a witness, refusal to exempt a witness and expert from a fine and a witness – from compulsory import (with the exception of decisions issued following the examination of a complaint against an order of the first instance court). As for the orders terminating case proceedings, more appropriate remedy should be a complaint to the Supreme Court, although the possibility of appealing to this Court is an exception. As for such orders, the acceleration of proceedings shouldn't overtake the overriding objective of letting a party have such a decision reviewed by a higher court.

The court decisions catalogue that may be appealed by the Supreme Court is therefore very narrow including only the decision of the second instance court rejecting the cassation appeal and the decision of the second or first instance court rejecting the complaint about the final decision illegality. Besides, the cassation judgment (decision on the merits) of the second instance court, i.e. overturning the judgment of the first instance court and referring to the case for re-examination, may be appealed (Articles 394^1 (1) and 1^1 of the Civil Procedure Code).

3. Self-Control

The second exception to the principle of instantiation is the phenomenon ensured in Article 395(2) of the Civil Procedure Code making the complaint a *de facto* appeal, with a relatively devolutive nature. Pursuant to this provision, if the complaint alleges the proceedings to be invalid or clearly justified, the court which issued the contested decision may revoke the contested decision at a closed session, without sending the files to the second instance court. If required, it can hear the case anew and the reissued decision is subject to appeal following general rules. The self-review purpose (autoremediation) that can take place only after a party lodges

a complaint,[29] is to resolve the case more quickly, in accordance with the applicant's request. By eliminating the proliferation of court instances, this provision aims to rationalise the proceedings and implement the order to consider the case without undue delay (Article 45(1) of the Polish Constitution). All this results in the relatively devolutive nature of the complaint, applying (of course) to the vertical complaint, as the horizontal complaint is not devolutive. However, with regard to the latter complaint, the same court deals with an incidental issue in three cases: by making the contested order, through self-control and by deciding on the complaint merits. The self-control phenomenon should therefore be excluded with regard to horizontal complaints, since the same court examines the complaint on its merits (or, as the case may be, rejects it), then verifies whether the complaint is "manifestly justified," that is to say, when the contested order defect is observed without a deeper analysis (*prima facie*).[30] Alternatively, it considers whether the proceedings are invalid and ultimately, the same court (albeit in a different formation) assesses the complaint merits.

Self-monitoring is only possible in relation to formal orders (possibly orders). It does not apply to substantive judgments. In other words, even if the court observes making a substantive manifest error in a payment order or judgment (in procedural proceedings) or a decision on the merits (in non-procedural proceedings) or that the proceedings are invalid, it is impossible to change the decision (this can only be done by the appellate court and only if the decision is challenged by an appropriate appeal).

4. Specific Appeals

The third exception to the instantionality principle are represented by the so-called specific appeals (objections against a payment order in proceedings by writ of payment, objections against a payment order in proceedings by writ of payment or electronic writ of payment – EPU, objections against a default judgment), for once they are lodged, the case is heard by the court having issued the contested decisions (or possibly by another court with jurisdiction over the case – in the case of an appeal against a payment order issued in the EPU). While appeals show the effect (in principle) of transferring the case examination to a higher court, other (specific) appeals do

[29] See e.g.: decision of the Supreme Court of 18 October 2011, III PZ 8/11, Legalis; Bladowski B., Rozpoznanie zażalenia w postępowaniu cywilnym, Nowe Prawo, No. 5, 1973, 689 et seq.

[30] See e.g.: order of the the Supreme Court of 20 May 1999, II UZ 58/99, OSNP 2000, No. 15, pos. 602; System prawa procesowego cywilnego, Tom III, edited by T. Ereciński and J. Gudowski, Część 1, Środki zaskarżenia, Warsaw, 2013, 478.

not express this feature.[31] This solution, however, cannot be criticised, although the final payment order shows the effect of the final judgment (Article 480^2 (4) of the Civil Procedure Code), while the final default judgment simply represents a judgment. However, when they are issued, there is no full examination of the case merits, either because the procedure is arranged in a way that the court issues a payment order without the defendant expressing his/her position for the first time within 14 days of being served with the order together with the claim statement copy, or because the defendant (for various, specified reasons) did not take a position on the merits of the claim statement and the default judgment was issued as a result. In such cases, the legislator considered that it could be appropriate for the defendant to express his/her position in the case by filing an appeal initiatig relevant proceedings before the court concerned. It is only after the court renders its decision terminating the proceedings that the parties have a remedy before a higher court (depending on a substantive or formal decision, they are entitled to an appeal or a complaint, respectively).

5. Suspensiveness VS Non-Suspensiveness of Appeals

As to whether the appeal lodging suspends the contested judgment execution, the answer is simple: if the non-final judgment is contested, the appeal lodging suspends that judgment execution. If the final judgment is contested, no suspension occurs. However, it should be remembered that the term "enforceability" should be understood as situations when the judgment is actually enforceable, i.e. it is enforceable by the competent enforcement authority (bailiff), as well as when the judgment is not enforceable, but is effective.

An exception in case of non-enforceable judgments is a payment order issued under a writ of payment procedure based on a bill of exchange or cheque (only the former one occurs in practice; a payment order based on a cheque mainly does not take place). It is because pursuant to the first sentence of Article 492(3) of the Civil Procedure Code, this order becomes immediately enforceable upon expiry of the time limit for meeting the claim[32] meaning that it may be enforced by execution even

[31] See: Bodio J., Uwagi o miejscu zażalenia wśród środków zaskarżenia w procesie – z uwzględnieniem nowelizacji kodeksu postępowania cywilnego z 2019 i 2023 r., Palestra, No. 8, 2023, 44.

[32] Pursuant to Article 480^2 (1) and (2(3)) and (4) of the Code of Civil Procedure, in an order for payment the court orders the defendant to satisfy the claim in full, including costs, within the time limit specified in the order, or to lodge an appeal, whereby in the case of an order for payment issued under the order procedure, the time limit (calculated from the date of service of the order) is: one month if the

before it becomes final. This payment order is an enforcement title which, after being provided with an enforcement clause, constitutes grounds for enforcement (Article 777 (1(1)) of the Civil Procedure Code).

Significantly, if objections are lodged against the order, at the request of the defendant, the court may suspend its enforcement. Thus, merely filing the objections to the payment order does not affect its enforceability. In this case, the defendant's motion (included in the objections to the payment order or in a subsequent pleading) is still required. The law does not specify when the court should suspend the enforceability of the payment order, but it should be done when the content of the objections indicates a high probability of the payment order being set aside and/or likelihood of the defendant's damage as a result of the payment order's immediate enforcement.[33]

All this mentioned above does not apply to the case when the State Treasury is the defendant: a payment order issued against the State Treasury is not immediately enforceable after the expiry of the time limit for the claim meeting. It is correct, as in this case there is no fear of a lack of security to deprive the claimant of satisfaction. Interestingly, the legislator privileges the employee, because when adjudicating an employee's claim in labour law cases, the court, *ex officio*, renders the judgment immediately enforceable in the part not exceeding a full monthly remuneration of the employee. It also applies when the State Treasury, represented by the competent *statio fisci*, acts as a defendant.

As for the other payment orders issued during the order procedure, i.e. those issued based on other documents listed enumeratively in Articles 485 (1) and 2^1 of the Civil Procedure Code,[34] in the claim statement the plaintiff may request such an order to be made immediately enforceable (pursuant to Article 333(3) in conjunction with Article 353^2 of the Civil Procedure Code). This request relies on showing how

service of the order on the defendant is to take place in the territory of the European Union, or three months if the service of the order is to take place outside the territory of the European Union.

[33] See: Draniewicz B., Piebiak Ł., Postępowania odrębne, Warsaw, 2007, art. 492, 13; Rylski P., Czy wyłączną przesłanką wstrzymania natychmiastowej wykonalności nakazu zapłaty wydanego na podstawie weksla, warrantu, rewersu lub czeku jest groźba poniesienia przez pozwanego niepowetowanej szkody, Polski Proces Cywilny, No. 4, 2011, 115 et seq.

[34] These are: 1) an official document; 2) a bill accepted by the debtor; 3) the debtor's demand for payment and the debtor's written statement of acknowledgement of the debt; 4) a contract, proof of fulfilment of a mutual non-monetary benefit, proof of delivery of an invoice or bill to the debtor, if the claimant is pursuing a claim for payment of a monetary benefit within the meaning of the Act of 8 March 2013. on counteracting excessive delays in commercial transactions (consolidated text Journal of Laws of the Republic of Poland of 2023, item 711, as amended), interest in commercial transactions specified in that Act or costs of collection referred to in Article 10(1) or (2) of that Act.

the payment delay makes it impossible or considerably difficult to enforce the order or expose the plaintiff to loss.[35]

As defined, a different rule applies to final judgments, i.e. the ones to which no ordinary remedy applies. They are enforceable or effective. However, if a party files an appeal in cassation against a judgment (decision on the merits) of a second instance court, he/she can request this court to suspend the enforcement or effectiveness of that judgment until the cassation proceedings are over. The party must demonstrate that irreparable damage can be caused to it as a result of the judgment enforcement, meaning a severe damage for the party, with consequences difficult to reverse due to: for example, the financial condition of the opposing party or financial or personal condition of the applicant.[36] In this case, the second instance court may (though it is not mandatory) suspend the decision enforcement and if the appeal is dismissed, the court can also suspend the enforcement of the first instance court decision (Article 388 (1) of the Civil Procedure Code).[37] Thus, here we see relative suspensiveness (on application), except for the sale of the property being suspended *ex officio* until the expiry of the time limit for the cassation appeal filing (after filing this appeal, the party must apply for suspension of the enforceability of the judgment). If the opposing party requests, the second instance court may make the stay of judgment enforcement conditional on the plaintiff providing appropriate security (usually, the deposit of an amount in court to secure a possible claim by the defendant). Security may also consist of withholding the release of sum of money to the plaintiff once having been enforced against the defendant or withholding the seized property sale.

The above-mentioned rules on security do not apply to judgments that are not enforceable (e.g. a judgment establishing the invalidity of a contract or the ineffectiveness of a termination of a contract). It means that it is not possible to make the enforceable judgment withholding conditional on the provision of appropriate security, besides the awarded litigation costs.

[35] See: Draniewicz B., Piebiak Ł., Postępowania odrębne, Warsaw, 2007, art. 492, 12.

[36] Kodeks postępowania cywilnego. Komentarz, edited by E. Marszałkowska-Krześ, Legalis, 2023, art. 388, thesis number 4.

[37] The Supreme Court has no jurisdiction to hear such an application; see e.g. order of the Supreme Court of 7 February 2002, II UKN 47/01, OSNP 2002, No. 13, pos. 9.

VI. Summary

The analysis of the appeals' characteristic features during civil proceedings in Poland gives a way to the conclusion that the system of these measures is extensive. From this point of view, when it comes to ordinary legal remedies, the appeal structure does not raise major doubts. The same cannot be said about the complaint developed excessively, with too much emphasis on the horizontal (non-evolutive) complaint. The legislator properly assumes that it is not required for the second instance court to hear a complaint also on a matter with a little impact on the proceedings' course. However, non-devolutive complaints are regulated too broadly. It should be the exception. If the first instance court commits a procedural (*error in procedendo*) and/or judgment error (*error in iudiciando*)[38], there must be a system of procedural measures to eliminate the erroneous ruling and replace it with a correct one. Besides, this system should be as effective as possible. This objective is achieved through the use of devolutive appeals. In the Polish civil proceedings, this principle has been "shaken up."

The extraordinary appeals system is also developed, while – despite various doubts (e.g. as to the legitimacy of an extraordinary complaint) – the legislator-introduced barriers (subjective and objective) are effective letting one conclude that the principle that they are entitled to during strictly defined conditions (not in every case when a party refuses to agree with the final decision) is not violated. They are based on the ordinary legal remedies.

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[38] See more fully: Bladowski B., Środki odwoławcze w postępowaniu cywilnym, Warsaw, 2013, 25; Ereciński T., Apelacja w postępowaniu cywilnym, Warsaw, 2012, 15.

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