ASEJ
Scientific Journal
Bielsko-Biala School of Finance and Law

Volume 27 | Number 1 | March 2023

ISSN2543-9103
eISSN2543-411X
www.asej.eu

Bielsko-Biała

Bielsko-Biala School of Finance and Law
Wyższa Szkoła Finansów i Prawa w Bielsku-Białej

Scientific Journal

Zeszyty Naukowe

Academic Quarterly Publication
Vol 27, No 1 (2023)

Bielsko-Biala 2023

Scientific Journal of Bielsko-Biala School of Finance and Law
The Journal is published by Bielsko-Biala School of Finance and Law; ISSN 2543-9103, eISSN 2543-411X.

The Journal is a quarterly publication with the scoring of 70 assigned by the Polish Ministry of Education and Science, prompting quality scientific work with local and global impacts, conducting a peer-review evaluation process and providing immediate open access to its content. The publication features original research papers as well as review articles in all areas of science, with particular emphasis on social sciences (including Finance, Economics, Business, Law, Internal Security) and technical sciences (especially IT).

The Scientific Journal Office
Bielsko-Biala School of Finance and Law University Press
ul. Tańskiego 5, 43-382 Bielsko-Biała;
tel. +48 33 829 72 42, fax. +48 33 829 72 21; http://www.wsfip.edu.pl; http://asej.eu

ISSN 2543 – 9103 eISSN 2543-411X

March – 2023

Contents

Editorial Words

Dear Readers,

Welcome to the 27th volume, first issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law. In this number, editorial board present a diverse range of articles that delve into pressing topics within the realms of economics, finance, law, and security. These articles shed light on various aspects of contemporary society and offer valuable insights into the challenges we face today.The first article by Medani P. Bhandari, titled "The Corruption: A Chronic Disease of Humanity: Causes, Effects, and Consequences," examines the pervasive issue of corruption and its profound impact on societies worldwide. Following that, Stanisław Ciupka explores the "Ethical Dilemmas of Contemporary Business," addressing the complex moral challenges faced by companies in the modern business landscape. Michał Comporek's article, "Levels of Reported Financial Result and the Scope of Accrual-Based Earnings Management," focuses on the practices of earnings management within public companies in the clothing industry, providing exemplification studies to illustrate the phenomena. Justyna Fibinger-Jasińska's contribution, "Judicial Review of Illegal Clauses in Consumer Loan Agreements," delves into the legal aspects of consumer protection and the role of the judiciary in scrutinizing loan agreements for potential unfair clauses. Wojciech Jakubiec examines the intricacies of money laundering and its selected security issues in "The Essence of Money Laundering – Selected Security Issues," shedding light on the challenges faced in combating this criminal activity. Radoslaw Koper explores the exclusion of freedom of expression during interrogations and the irregularly obtained evidence, focusing on Article 168a CCP, in "Irregularly Obtained Evidence (Article 168a CCP) in the Aspect of Exclusion of Freedom of Expression of Interrogated Individuals." "The Emotional Surge Impact on the Formation of a Personal Brand as an SMM Product" by Kateryna Kalynets, Yevhen Krykavskyy, Petecki Ignacy, Sylwia Nycz-Wojtan examines the influence of emotional surges on the formation of personal brands, specifically within the realm of social media marketing (SMM). Aleksander Sapiński's article, "The Importance and Challenges of Information Security in the Digital Age: Analysis of the Current Situation and Prospects for Development," analyzes the current state of information security in the digital age, highlighting its significance and outlining the challenges that lie ahead. Lastly, article by Mariola Adamiec-Witek, which sheds new light on the issue of the conduct of proceedings before common courts with the participation of jurors.

I hope that this issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law provides valuable insights and stimulates further research in the fields of economics, finance, and law. I extend my gratitude to the authors for their contributions and commend the rigorous academic scholarship demonstrated in their work.

prof. dr Ihor Halystia
Editor of the ASEJ, Issue 1, Volume 27, 2032.

Restricting the participation of lay judges in adjudicating civil cases - as a violation of democracy

Mariola Adamiec-Witek[1]

[1]Bielsko-Biala School of Finance and Law
Poland

***Abstract*— The author discusses the provisions limiting the participation of lay judges in adjudicating in civil cases introduced in 2021, indicates the effects of this regulation on adjudication and the reaction of legal circles to the introduction of this regulation - with emphasis on the violation of democracy as a result of these changes. The author also indicates how the legislation - since Poland regained independence - regulated the issue of the participation of the so-called social factor in adjudication.**

Keywords— Constitution, Lay Judge, juror, social factor, democracy

I. INTRODUCTION

The Constitution of the Republic of Poland in Art 10(1997) - establishes that the system of the Republic of Poland is based on the division and balance of the legislative, executive and judiciary powers. It also indicates that legislative power is exercised by the Sejm and the Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by courts and tribunals.

The principle of separation of powers is one of the basic principles characterizing a democratic state ruled by law. It prevents the concentration of power and its appropriation by one political option. The essence of this principle is the assumption of the need to separate various functions, tasks and competences between various state authorities (Tuleja, 2019). If the discussed provision were to be treated seriously, we would have a geometrically perfect political system in Poland. The three basic functions of the state, such as legislative, executive and judiciary, would be equally distributed (Haczkowska, 2014). Unfortunately, none of these conditions is met (Haczkowska, 2014). For some time, there has been a clear disturbance in the separation of powers with a visible marginalization of the role of the judiciary.

Moving on to the regulations concerning the judiciary and the administration of justice, first of all, Art 45 section 1 of the Constitution (1997) which states that " Everyone has the right to a fair and public hearing of their case, without undue delay, by a competent, impartial and independent court". The implementation of the right to a court requires that the court be characterized by the features indicated in art 45 of the Constitution. Judicial independence requires appropriate rules for the appointment of judges and shaping the composition of the court, guaranteeing the durability of the tenure of judges, appropriate rules for their exclusion or dismissal (Tuleja, 2019).

In turn, from the content of art 182 of the Constitution (1997) shows that the participation of citizens in the administration of justice shall be regulated by law. There is a discussion in the doctrine regarding the legal nature of this provision. In addition to the views on its value as a systemic principle, a position was also expressed regarding the regulation of art. 182 of the Constitution as only an authorizing and referring norm. As a consequence, it is debatable whether the participation of citizens should be the rule in the administration of justice, or whether the wording of the Constitution is only permission for the legislator to introduce mechanisms of this type of participation (Tuleja, 2019). Therefore, the Constitution does not specify either the form or the scope of citizens' participation in the administration of justice, leaving this regulation to the discretion of the legislator. It is correct to believe that the wording of art. 182 shows that it is neither possible to completely exclude citizens from exercising this function (of the judiciary), nor to narrow it down to a symbolic extent (P 16/04; Stafjan Bosek, 2016). Jacek Sobczak's (2022) view should also be considered accurate, according to which: "in view of such a high generality of this norm, it should be said

ASEJ - Scientific Journal of Bielsko-Biala School of Finance and Law
Volume 27, No 1 (2023), pages 7
https://doi.org/10.19192/wsfip.sj1.2023.9
Received: October 2023 Accepted: December 2023
Published: March 2023

that it was shaped so that the Constitution is not interpreted in such a way that the administration of justice is exercised only by professional judges" (Kwaśniak 2022). It should also be noted that part of the doctrine indicates that Art 182 is closely related to the content of art 4 section 1 of the Constitution (1997), according to which the supreme power in the Republic of Poland belongs to the Nation (Knoppek 2014).

To sum up: The legislator is obliged to create a legal framework for the participation of the so-called social factor in adjudication. It should be emphasized that only the ordinary legislator is responsible for determining the final scope of adjudication, which will be shared by citizens (Safjan Bosek 2016).

The institution of performing judicial duties by persons who are not professional judges should primarily serve the better implementation of the subjective right specified in art 45 of the Constitution (SK 7/06; Ts 73/17).

II. Participation of the social factor in adjudication in Polish legislation - a historical outline

Already the *March Constitution* - the first Polish basic law after regaining independence in 1918 - provided for the election of justices of the peace by the population and the participation of citizens in jury courts (Journal of Laws 1921.44.267 and Journal of Laws 1921.52.334). The Ordinary Courts Organization Act of 1928 (Journal of Laws 1928.12.93) introduced justices of the peace and jurors to assize courts and commercial courts.

Lay judges also appeared in labour courts established in 1928 (Journal of Laws 1928.12.93). The jury consisted of a professional judge and two lay judges. As a side note, it should be added that the *April Constitution* (Journal of Laws 1935.30.227) did not provide for the participation of the social factor in adjudication. Courts of assizes were abolished by the Act of 9 April 1938 on the abolition of the institution of Courts of Assizes and Justices of the Peace (Journal of Laws 1938.24.213). Pursuant to the decree of the Polish Committee of National Liberation of 15 August 1944 on the introduction of Courts of Assizes, the institution of Courts of Jury and Justices of the Peace was restored (Journal of Laws 1944.2.7) .

The Constitution of 1952 provided, and precisely art. 59, (Journal of Laws 1960.54.309) that hearing and adjudicating cases in courts is carried out with the participation of people's jurors, except for cases specified in the act.

In the period of the People's Republic of Poland, a separate act was devoted to lay judges. The preamble to this act stated that it was adopted "in order to ensure broad participation of representatives of the working people in towns and villages in the administration of justice in accordance with the principles of this administration in the Polish People's Republic" (Journal of Laws 1960.54.309). This Act was repealed on 1 September 1985, when the Law on the Organization of Common Courts of 20 June 1985 entered into force. Provisions on lay judges courts were then absorbed by the new Law on the System of Common Courts.

The currently binding Act - Code of Civil Procedure - in its original wording of November 17, 1964 - in Art. 47 § 1 provided for hearing cases in the first instance with one judge as the chairman and two lay judges, unless a specific provision provides otherwise (Journal of Laws 1964.43.296) .

To sum up - in the post-war period, until 1996, the basic adjudicating panel in the court of first instance was the bench, i.e. a professional judge as the chairman and two lay judges as members of the adjudicating panel.

Thus, the currently binding Constitution, providing in art. 182 the participation of citizens in the administration of justice does not introduce a solution previously unknown in Polish legislation, but rather continues the pre-war tradition of participation of the social factor in adjudication.

III. Purpose of introducing a collegiate composition of the court

It is commonly assumed in the doctrine that the collegial composition of the court ensures a higher standard of jurisprudence, and thus provides the parties with the right to a court in the aspect of the right to fair proceedings and the right to a judgment at a higher level. In accordance with the literature and jurisprudence, it is also assumed that the collegiate composition is a guarantee of the independence of the court and strengthening its independence. A single-member court is more exposed to possible pressure and other attempts to unlawfully influence the manner of proceeding and the content of the decision. Consideration of a case by a collegiate bench therefore creates greater guarantees of independence and impartiality of judges as well as a thorough and comprehensive examination of a particular case by them (Waśkowski 1932). It is hard to disagree with such a view.

The importance of the participation of lay judges in adjudication was also emphasized by the Constitutional Tribunal, indicating that lay judges. “In court proceedings represent various social groups, average citizens with their life and professional experience, which, by creating the possibility of collegial resolution based on the confrontation of professional and social point of view from the point of view, it is to protect the judiciary against isolation and alienation. Thanks to the participation of lay judges, the court, on the one hand, has conditions conducive to adjudication in closer contact with the public, and on the other hand - it has its representatives and advocates facilitating the upbringing, educational and informative impact on society” (Murzynowski 1994). According to the Constitutional Tribunal, participation in sentencing of jurors coming from outside the group of professional lawyers is to constitute a "counterbalance" to the professional factor and is to guarantee the possibility of multilateral analysis and evaluation of court cases under consideration (P 16/04).

IV. The systemic position of lay judges

Pursuant to Article 4 § 2 of the Act of July 27, 2001 Law on the system of common courts (Journal of Laws 2020.2072) lay

judges were granted equal rights with judges and assistant judges when deciding cases. Lay judges are therefore full members of the adjudicating panel and take equal part in deciding the case (with the exception of the right to preside over the bench). The votes of lay judges when issuing decisions have the power equal to the votes of professional judges – therefore, taking into account the ratio of the number of lay judges to the number of professional judges in various types of cases, in the absence of unanimity, lay judges may outvote the professional judge (or judges).

The lay judge signs the operative part of the judgment (and decisions on the merits of the case), may submit a dissenting opinion and is subject to exclusion under the same rules as a professional judge Journal of Laws 2021.1805; Journal of Laws 2022.1375) . The legislator also declared to the lay judges that they are independent in adjudication and subject only to the Constitution and statutes (Journal of Laws 2020.2072). Therefore, the juror is very important element of the jury.

V. Removal of lay judges from adjudicating benches in civil cases - "covid law"

Successive amendments to the civil procedure (as well as the criminal procedure) consistently limited the participation of lay judges in adjudicating cases. These changes have been introduced since the 1990s - through several amendments to art. 47 Code of Civil Procedure. These amendments took place in 1996, 2005, 2007, 2008, 2019.

The apogee of these changes is the Act of May 28, 2021 amending the Act - Code of Civil Procedure and some other acts, which amends the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws 2021.1090) . The author of the bill was the Ministry of Justice. Pursuant to Art. 4 point 1 of this Act, an amendment was made to the Act of March 2, 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them in such a way that Art. 15zzs 1 sec. 1 point 4 of the amended Act, was given the following wording: “during the period of the state of epidemic threat or the state of epidemic declared due to COVID-19 and within a year from the cancellation of the last of them, in cases examined pursuant to the provisions of the Act of November 17, 1964 - Code of Civil Procedure, hereinafter referred to as the Code of Civil Procedure: in the first and second instance, the court hears cases in a panel of one judge”. At the same time, Article 6(1) of the amending Act indicates that the above provision also applies to proceedings recognized in accordance with the provisions of the Civil Procedure Code, initiated and not completed before the date of entry into force of this Act.

Until the introduction of this provision in the civil procedure in the first instance, some cases in the field of labour law were heard by lay judges (determining the existence, establishment or expiry of an employment relationship, recognition of the ineffectiveness of termination of an employment relationship, reinstatement to work and restoration of previous working or pay conditions). together with the claims pursued and for compensation in the event of unjustified or violating the provisions of notice and termination of the employment relationship, violation of the principle of equal treatment in employment and related claims, compensation or redress as a result of mobbing) in accordance with Art. 47 § 2 section 1 of the Code of Civil Procedure.

The lay judges - in the first instance - also examined some cases related to family relations (for divorce, separation, determination of the ineffectiveness of acknowledging paternity, dissolution of adoption) in accordance with art. 47 § 2(1) of the Code of Civil Procedure. In addition, adoption cases in the first instance were heard by the court composed of one judge and two lay judges in accordance with art. 509 Code of Civil Procedure .

The effect of introducing the change is that lay judges have been completely eliminated from adjudicating in district courts in accordance with Art. 28 § 2 Civil Procedure Code. Although this provision is to be of an episodic nature, concerning the period of the state of epidemic threat or the state of epidemic (Journal of Laws 2021.2095) - can such a - even "temporary" solution be accepted?

In the explanatory memorandum to the bill, the introduction of such a change is very briefly justified, it is only indicated that: “These changes are related to the progressing epidemic in the country and in the world. (...) For the same reasons, it is also necessary to adopt as a rule the hearing of cases by a court composed of one judge. This is, of course, dictated by the epidemiological threat posed to each other by three people sitting together in the composition of the court. It does not matter whether the case is adjudicated by one or three judges. There is no objective and verifiable evidence to suggest that a single-judge judgment is less fair than an extended bench, or that a case has been examined less thoroughly by one judge than by three. The assumptions appearing in this respect are deeply harmful to judges and only prove a lack of knowledge of the judge's work methodology. It would also mean a kind of vote of no confidence in the knowledge and skills of hard-working judges in first instance courts who, de facto , having less experience and knowledge than their colleagues from higher instance, must examine a given case equally reliably and thoroughly” (Sejm Paper No. 899)

This justification does not refer to the content of art. 182 of the Constitution of the Republic of Poland (the principle of participation of the social factor in the administration of justice) and the possibility of violating this principle by the adopted provision. There was also no reference to a possible breach of EU law.

VI. Effects of the introduced regulation

The effects of the introduced regulation are far-reaching. Its consequence is a state of legal uncertainty created in common courts. Courts and judges are not sure in what composition they should hear cases: whether with the application of unconstitutional provisions of the act - at the risk of the parties

to the proceedings raising the allegation of invalidity of the proceedings - or whether they should take action to ensure respect for the Constitution and international law in the field of the right to judgment (P 13/21). After all, the composition of the adjudicating court, contrary to the regulations, results in the gravest defect of the proceedings - the invalidity of the proceedings in accordance with Art. 379 item 4 of the Code of Civil Procedure.

The court, when issuing a judgment, should correctly base it on both substantive and procedural law. The interest of the state and the judiciary requires striving to minimize the risk of not only incorrect adjudication from the perspective of substantive law norms, but also the issuance of decisions whose shape may be influenced by shortcomings related to the incorrect application of procedural law norms (Zembrzeski 2017). It is currently not possible for the courts to comply with this condition due to doubts as to the composition in which certain categories of cases should be heard.

The state of uncertainty also creates the time range in which this provision is to be applied. Indication that it is to apply "(…)During the period of the state of epidemic threat or the state of epidemic announced due to COVID-19 and within a year of the cancellation of the last of them" (Journal of Laws 2021.2095 is not sufficient in this regard. Determining the end date to which the introduced solution is to apply on the basis of this provision is at least problematic. First of all, it should be pointed out that the act referred to does not define the term "year", nor does it refer to Article 165 § 1 of the Code of Civil Procedure or to art. 112 Civil Code - even though art. 15zzs 1 applies to civil proceedings (Szmid 2020). In addition, this provision uses the conjunction "and" - which means that its application takes place not only during the state of epidemic threat (which has already been cancelled) or the state of epidemic, but this one-year period should be counted from the date on which the state of epidemic was canceled. Therefore, it should probably be assumed that the one-year period referred to in the provision has not yet started to run (Szmid 2020).

To sum up: due to the wording of the provision referred to, at the moment it is not possible to determine until when the provision is to apply - even though the principles of legislation imply that episodic provisions should have a clearly defined end date. These are just some of the problems resulting from the uncertainty as to the time range in which this provision is to be applied.

VII. Reaction of the Ombudsman and legal circles

The introduction of the regulation eliminating lay judges from adjudication did not go unnoticed. Even during the legislative work in the Sejm, doubts about the proposed changes (including the removal of lay judges) were raised by the First President of the Supreme Court, the Polish Bar Council, and the Commissioner for Human Rights. All these entities emphasized that the draft act introduced unconstitutional solutions that could even invalidate the proceedings. Despite these critical voices, the regulations were passed. After their adoption, critical voices did not stop. The Ombudsman, the Supreme Council of Advocates (NRA), the Association of Polish Judges *Iustitia*, the National Association of Administrative Court Judges, the Association of Judges *Themis* and the Association of Prosecutors *Lex Super Omnia* in the memorandum on the right of a citizen to court issued on July 7, 2021, emphasized the unconstitutionality of the provision of law (brpo.gov provision.pl).

Doubts as to the compliance of these changes with the Constitution also resulted in the referral (by the Katowice-Zachód District Court in Katowice, 7th Labor and Social Insurance Division) to the Constitutional Tribunal of a legal question (of September 7, 2021) whether:

a. 15 zzs1 sec. 1 and 2 of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, as amended pursuant to art. 4 of the Act of May 28, 2021 amending the Act - Code of Civil Procedure and some other acts (Journal of Laws 2021.1090) is consistent with art. 182 of the Constitution of the Republic of Poland,
b. 15 zzs1 of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, as amended pursuant to art. 4 of the Act of May 28, 2021 amending the Act - Code of Civil Procedure and some other acts (Journal of Laws 2021.1090) is consistent with art. 2 of the Constitution of the Republic of Poland,
c. 15 zzs1 sec. 1 point 4 of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, as amended pursuant to art. 4 of the Act of May 28, 2021 amending the Act - Code of Civil Procedure and some other acts (Journal of Laws 2021.1090) to the extent that it limits during the state of epidemic emergency or state of epidemic announced due to COVID 19 and within a year from appeal of the last of them, the right to hear the case in a composition with the participation of 2 lay judges is consistent with art. 31 sec. 3 and from art. 45 of the Constitution of the Republic of Poland (P 13/21).

The case is still pending before the Court. The Ombudsman, taking a position on this matter, requested that Art. 15 zzs1 sec. 1 point 4 of this Act to the extent that it limits, during the period of the state of epidemic threat or the state of epidemic announced due to COVID 19 and within one year from the cancellation of the last of them, the right to hear cases initiated and not completed before the date of entry into force of the Act in a composition composed of lay judges, is inconsistent with art. 2, art. 45 sec. 1 of the Constitution of the Republic of Poland, art. 31 sec. 3 and art. 182 of the Constitution of the Republic of Poland (P13/21). Also decided to submit a constitutional complaint to the Constitutional Tribunal (Ts 244/21). By decision of January 20, 2022, the Tribunal refused to proceed with this complaint.

In April 2022, over 80 opposition deputies submitted a joint interpellation on the practice of eliminating social jurors from court trials (sejm.gov.pl). In response to the interpellation, the

Ministry of Justice stated the following: "As stated in the doctrine, the provision of Art. 182 of the Constitution of the Republic of Poland introduces only a requirement to define by law the issue of citizens' participation in the administration of justice, leaving it entirely to the legislator and without prejudging the shape of this participation. This means that the choice of the model of citizen participation in the administration of justice has also been delegated to the legislator (Safjan, Bosek, 2016). The anti-COVID Act, which – importantly – changes the general regulations regarding the composition of the court for a strictly defined period of time, is therefore an emanation of the freedom allowed by the legislator to shape the participation of the social factor in the administration of justice. At the same time, it should be noted that the introduced regulations do not completely exclude citizens from the function of lay judges , as they apply only to cases heard according to the provisions of the Code of Civil Procedure, while they still perform judicial activities in cases heard according to the provisions of the Act of June 6, 1997 - Code of Criminal Procedure (Journal of Laws 2021.534, as amended), or the Act of 8 December 2017 on the Supreme Court (Journal of Laws 2021.154, as amended). It should also be mentioned that pursuant to Art. 14fa §1 of the Anti-COVID Act during the period of the state of epidemic threat or state of epidemic announced due to COVID-19, and within a year after their cancellation in cases recognized in accordance with the provisions of the Act of June 6, 1997 - Code of Criminal Procedure for crimes punishable by imprisonment the upper limit of which does not exceed 5 years, at the appeal hearing, the court shall adjudicate in a panel of one judge, if in the first instance the court adjudicated in the same panel. This provision entered into force on June 22, 2021 (Journal of Laws 2021.1023). Therefore, also in the case of criminal cases, the legislator decided to reduce the composition of the adjudicating panel, because pursuant to Art. 29 § 1 of the Code of Criminal Procedure, at the appeal and cassation hearings, the court shall adjudicate in a panel of three judges, unless the law provides otherwise. This provision does not cover lay benches, as such benches are encountered in criminal proceedings only in the first instance (Article 28 § 2-4 of the Code of Criminal Procedure), however, it is an expression of the legislator's desire to achieve the overriding goal, which is to streamline proceedings in common courts. Therefore, the decision to reduce adjudicating panels, taken - which should be emphasized - both in civil and criminal proceedings, cannot be treated as aimed at excluding a particular group (lay judges) from the judicial adjudication process" (sejm.gov.pl). This answer was considered unsatisfactory and as a result - on July 20, 2022 - another interpellation was sent on the same subject (sejm.gov.pl).

The Main Board of the Association of Polish Lay Judges conducts talks with public figures, representatives of the National Council of the Judiciary, institutions on which the fate of lay judges depends, has issued many letters in which it strongly opposes the introduced changes, eliminating lay judges from the courts as representatives of society in the administration of justice (poznan.so. gov.pl). Thus, it is clear that legal circles see a serious problem in eliminating lay judges from adjudicating in civil cases. However, the executive and legislative authorities do not see this problem.

VIII. Non-compliance of the regulations with EU law

The issue of non-compliance of the provision eliminating lay judges from adjudicating in civil cases with EU law should also be mentioned. The provision of Article 6 (1) of the European Convention on Human Rights and Fundamental Freedoms states that " Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of his civil rights and obligations or of any accusation in the criminal case against him" (Journal of Laws 1993.61.284). Therefore, this provision obliges the parties to the Convention to organize their own administration of justice in such a way that courts and court procedures meet all the requirements resulting from this provision. It follows from the cited provision that the requirement of a correct composition of the adjudicating panel falls within the scope of the essential content of the fundamental right to a fair trial (OJ EU.C.2018/328/22). On the basis of the rally invoked art. 6 sec. 1, it should be assumed that a violation of this provision will be the examination of the case and the issuance of a ruling by such a court, the composition of which will be contrary to statutory provisions, whether procedural or systemic.

IX. Conclusion

The trend initiated in 1996 limiting the participation of lay judges in hearing civil cases by the legislator. Article 47 § 1 of the Code of Civil Procedure governing the composition of the court in the first instance until 1 July 1996 provided, as a rule, for cases to be heard in the first instance by one judge as the chairman and two lay judges, unless a specific provision provides otherwise. After the amendment of the provision - from 1 July 1996 - examination of cases in the first instance by lay judges was limited to cases in the field of labour and social security law and cases related to family relations, with the exception of alimony cases (Journal of Laws 1996.43.189). Subsequent amendments to art. 47 of the Code of Civil Proceedings gradually limited the scope of cases examined with the participation of lay judges - ultimately leaving the composition of lay judges only in strictly defined employment and family cases. Even then, commentators pointed out that "under the current legal status, the participation of lay judges in the administration of justice is marginal. It seems that this process of marginalizing the importance of lay judges has gone too far" (Górski 2013).

The apogee of these changes is the "covid law" being discussed. It should be noted that the solution adopted in it raises many objections. First, it violates art. 45 of the Constitution - because it deprives citizens of the right to a fair and public hearing of a case without undue delay by a competent, impartial and independent court. This regulation

also violates art. 182 of the Constitution, reducing the participation of citizens in the administration of justice to a symbolic, marginal dimension. Regardless of the adoption of the view or Art. 182 of the Constitution constitutes a systemic principle, or is it merely an authorizing and referring norm, there is no doubt that the wording of this provision implies that it is neither possible to completely exclude citizens from exercising the functions of the judiciary, nor to narrow it down to such an extent that symbolic. The discussed regulation limits this share to the symbolic scope.

The introduction of this regulation is also surprising due to the lack of consistency of the legislator, who in 2017 introduced a provision aimed at ensuring the immutability of the composition of the court (Journal of Laws 2017.1452) , and already in 2021 introduced a provision eliminating lay judges from adjudicating in civil cases - and so in cases initiated after the act entered into force, as well as those already pending - thus forcing a change in the composition of the judging panel also in pending cases. Therefore, the legislator departed from the principle of immutability of the composition, but also from the principle of collegiality. Collegiality is a principle of democracy.

The collegiality of the court has two functions. The first - obtaining the most accurate and thus fair decision possible, and the second - obtaining social acceptance for it. The single-member court will be deprived of the possibility of consulting the draft decision, which will increase the risk of error, increase the psychological and social pressure to which the judge is subjected, and finally reduce the respect for such a judgment and social respect for the judiciary (Korpalski, 2021).

Removing jurors from adjudication is also a step towards depriving the Nation of its sovereign power, despite the fact that art. 4 section 1 of the Constitution clearly states that the supreme power in the Republic of Poland belongs to the Nation.

The content of the regulation is all the more surprising as “An interesting view has recently been expressed in the science of constitutional law that the increase in the role of judges in a state governed by the rule of law, instead of leading to the creation of a state governed by law, may lead to the creation of a state governed by judges and For this very reason, it is necessary to allow the participation of the social factor in the judicial application of law. So the point is that we have the rule of law, not the rule of judges. Lay judges are therefore to prevent excessive emancipation of the judiciary. They are to convey to judges the current views of the society on the application of the law and make them aware of the social hierarchy of values” (Banaszek 2009). This view is controversial, but it is worth considering.

As a “cherry on the cake" you should also add a violation of the rule article 6 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws 1993.61.284). This provision obliges the states - parties to the Convention to organize their own administration of justice in such a way that courts and court procedures meet all the requirements resulting from this provision” (K 6/21; K 7/21). Removing lay judges from adjudication undoubtedly means that the requirement of a proper adjudication panel required by this provision and falling within the scope of the essential content of the fundamental right to a fair trial has not been maintained.

As Kaczmarczyk points out: “despite the postulates appearing in the doctrine and judicature to abolish the institution of a lay judge, this solution is not possible to implement in the current system of socio-political relations, and moreover, it raises objections from the point of view of the axiology of law and politics, systemic tradition and court pragmatics . (...) In a system based on the principle of the supremacy of the nation (...) the elimination of the institution of participation of the social factor in the administration of justice would be a systemic heresy and an expression of reversing the legal and political achievements of the state to the times before the French Revolution” (Kwaśniak 2022). By the way, it should also be noted that the same "covid law" - in art. 15zzs 1 section 1 item 4, an amendment to the Code of Civil Procedure was also introduced, also consisting in the introduction of a second-instance court hearing cases composed of one judge. This regulation may raise similar doubts as the removal of lay judges from the benches. This, however, is a material for a separate study.

X. References

Constitution of March 17, 1921 (Journal of Laws 1921.44.267 and Journal of Laws 1921.52.334)

Constitutional Act of April 23, 1935 (Journal of Laws 1935.30.227)

Constitution of the Republic of Poland of 22 July 1952 (Journal of Laws 1976.7.36)

Constitution of the Republic of Poland of April 2, 1997. (Journal of Laws 1997.78.483)

Ordinance of the President of the Republic of Poland of February 6, 1928 on the system of common courts (Journal of Laws 1928.12.93)

Regulation of the President of the Republic of Poland of 22 March 1928 on labor courts (Journal of Laws 1928.37.350)

Act of April 9, 1938 on the abolition of the institution of juries and justices of the peace of April 9, 1938. (Journal of Laws 1938.24.213), 1944 of the Polish Committee of National Liberation on the introduction of jury courts (Journal of Laws 1944. 2. 7)

Act of 2 December 1960 on people's lay judges in common courts (Journal of Laws 1960.54.309)

Act of April 23, 1964. Civil Code (Journal of Laws 2020.1360)

Act of November 17, 1964 Code of Civil Procedure (Journal of Laws 2021.1805)

Act of June 20, 1985 Law on the system of common courts (Journal of Laws 1985.31.137)

Act of 1 March 1996 amending the Code of Civil Procedure, Regulations of the President of the Republic of Poland - Bankruptcy Law and Composition Proceedings Law, the Code of Administrative Procedure, the Act on Court Costs in Civil Matters and some other acts. (Journal of Laws 1996.43.189)

Act of June 6, 1997 Code of Criminal Procedure (Journal of Laws 2022.1375)

Act of 27 July 2001 Law on the system of common courts (Journal of Laws 2020.2072)

Act of 1 July 2005 amending the Act - Law on the Common Courts Organization and certain other acts (Journal of Laws 2005.169)

Act of 15 March 2007 amending the Act - Code of Civil Procedure, Act - Code of Criminal Procedure and amending certain other acts Journal of Laws 2007.112.766

Act of November 6, 2008 amending the Act - Family and Guardianship Code and some other acts (Journal of Laws 2008.220.1431)

Act of 12 July 2017 amending the Act on the Common Courts Organization and certain other acts (Journal of Laws 2017. 1452)

Act of 4 July 2019 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws 2019.146)

Act of March 2, 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws 2020.2095)

Act of 28 May 2021 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws 2021.1090)

Judgment of the Constitutional Tribunal of of 29 November 2005 P 16/04

Judgment of the Constitutional Tribunal of 24 October 2007, SK 7/06

Decision of the Constitutional Tribunal of May 25, 2017, Ts 73/17

Judgment of the Constitutional Tribunal of November 24, 2021, ref. no. no. K 6/21

Judgment of the Constitutional Tribunal of March 10, 2022, ref. no. no. K 7/21

Convention for the Protection of Human Rights and Fundamental Freedoms of 10 July 1993 (Journal of Laws 1993.61.284)

Judgment of the CJEU of 25 July 2018, C 216/18 (Journal of Laws UE.C.2018/328/22

B. Banaszak(2009) , Commentary on art. 182 of the Constitution

Safjan and Bosek (2016), Article 182 of the Constitution of the Republic of Poland, ed. 1 Wiliński and Karlik

A. Górski (2018), Law on the system of common courts. Comment, Warszawa

J Gudowski (ed.), Commentary on the Act - Law on the System of Common Courts, Law on the System of Common Courts. Act on the National Council of the Judiciary. Commentary, ed. II ,

M. Haczkowska (2014), Constitution of the Republic of Poland. Comment, Legalis

K. Knoppek (2014), Participation of citizens in the administration of justice in civil proceedings Ius Novum 2014, No. 5

M. Korpalski (2021) Three is more than one - on removing collegiality in civil proceedings, Rzeczpospolita May 4, 2021

A. Kwaśniak (2022), Practical implications of the principle of citizen participation in the administration of justice, resulting from Art. 182 of the Constitution of the Republic of Poland, in the context of the latest regulations, ILO 2022, No. 8

A. Murzynowski (1994), The essence and principles of the criminal process, Warsaw

A. Olas (2021), Civil Procedure Law System, Non-contentious proceedings. T. Ereciński(ed.), K. Lubiński, T. Ereciński , vol. IV, part 1, vol. 1, Warsaw 2021, p. 647).

K. Szmid (2020), art. 15zzs 1 KoronawirusU , ed. 1/ Legalis

P. Tuleja (2019), Constitution of the Republic of Poland . Commentary, ed. II. lex

E. Waśkowski (1932), System of civil process, Vilnius

T. Zembrzuski (2017), Invalidity of proceedings in a civil trial, WKP

WSFiP conducts research and educates students in the following fields:

Finance and Accounting
- Treasure Administration
- Banking
- Corporate Finance
- Accountancy
- Accounting and Finance in Public Sector Institutions
- Corporate Accounting and Controlling
- Audit
- Management and Finance in Real Estate

Law
- this program gives strong legal foundations to undertake further professional training for judges, prosecutors, atorneys, notaries, bailiffs.

Administration
- Fiscal Administration
- Local Government Administration

Logistics
- this program gives good preparation for work in logistics companies as well as in other economic and administrative units.

Cyberspace and Social Communication
- Communication and Image Creations
- Safety in the Cyberspace

Internal Security
- Administration and Management in Security
- Security and Public Order
- Security and Development in Euro-region
- Security of Information and Information Systems
- Security in Business
- Criminology and Investigative Studies
- Criminology and Forensics
- Protection of People and Property
- Public Order Agencies

Information Technology
- Databases and Net Systems
- Computer Graphics and Multimedia Techniques
- Design of Applications for Mobile Devices
- IT Services in Public Administration Units

Postgraduate courses
- Administrative studies
- Fiscal Administration
- Law and management in health service