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Limiting the collegiality of adjudication - in civil cases - as a violation of democracy.

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***Abstract*— The author discusses the regulations limiting collegiality in adjudication in civil cases - including in the second instance - introduced successively since 1965, with particular emphasis on the changes introduced in 2021 and then in 2023, indicates the effects of these regulations on adjudication and the reaction of the legal community to the introduction of this regulation - emphasizing the violation of democracy as a result of these changes. The author also indicates how the issue of collegiality in adjudication has been regulated in legislation - since Poland regained independence.**

Keywords— Constitucion, collegiality of adjudication , composition of the court , democracy

I. INTRODUCTION

According to Article 45, Section 1 of the Constitution of the Republic of Poland, " Everyone has the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

This provision expresses a very important principle, which is called the right to a court. It is a consequence of the rule that only the court is the body that ultimately decides on the freedoms, rights and obligations of an individual. It is also a very important right of an individual who can pursue their rights before a "competent, independent, impartial and impartial court". A judicial body should therefore have all of these features (Skrzydło 2023).

The concept of "competent court" can be combined with a threefold understanding of this competence. This concept can be understood as a court that, according to procedural regulations, has substantive, local and functional jurisdiction in a given case. However, this concept can be understood as a court that adjudicates in a proper composition, i.e. in a composition specified by procedural provisions, possibly also systemic ones, as systemic and procedural matters cannot be strictly separated from each other, and even if it were possible to do so, in practice - for pragmatic reasons or unawareness of the problem - this is not done (Sanetra 2024). Therefore, the implementation of the right to a court requires that the court be characterized by the features indicated in Article 45 of the Constitution (Tuleja 2023), in particular that it adjudicates in a proper composition.

II. COMPOSITION OF THE COURT IN POLISH LEGISLATION - A HISTORICAL OUTLINE

Determined most of the agencies of the Polish state date the beginning of their

20th century activity to the autumn of 1918 or the first months of 1919. The independent justice system is an exception here. The courts – initially called Royal Polish – were launched earlier, in 1917 (Krzyżanowski 2020). These courts initially operated in part of the Kingdom of Poland (Official Journal of the Department of Justice 1917 No. 1 item 1) . The regulation establishing these courts provided that "The general administration of justice in the Kingdom of Poland is exercised by: Courts of the Peace, District Courts, Courts of Appeal and the Supreme Court" . (Official Journal of the Department of Justice 1917 No. 1 item 1) In further provisions, the regulation established the principle of collegiality of adjudicating panels, providing that courts of the peace adjudicate in a full body, consisting of a justice of the peace as the presiding judge and two lay judges. District courts pass judgment - in criminal cases - in a full court, composed of one judge as the presiding judge and two lay judges; in civil cases - in a full court, composed of three judges; in commercial cases - in a full court, composed of one judge as the presiding judge and two lay judges "elected by

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the merchants". Courts of appeal adjudicate: in criminal cases - in a panel consisting of two appellate judges and three lay judges; in civil and commercial cases - in a panel consisting of three appellate judges. In turn, the Supreme Court Chamber adjudicates in a panel of three Supreme Court judges (Journal of Laws of the Department of Justice 1917 No. 1 item 1).

The next units of the Polish justice system in the further part of the Russian partition were established by the Regulation of the Commissioner General of the Eastern Lands on the organization of general courts in the eastern territories of May 15, 1919 (Journal of Laws of the Civil Administration of the Eastern Lands of 1919 No. 4, II 22). The structure of the judiciary included: justices of the peace, district courts and a court of appeal. Only justices of the peace were to adjudicate as a single judge. District courts and a court of appeal were to adjudicate in a panel consisting of 3 judges, one of whom was the presiding judge ((Journal of Laws of the Department of Justice 1917 No. 1 item 1) .

The principles of operation of the justice system in the former Austrian Partition (part of it) were specified in the "Decree on the assumption of the administration of justice in the former Austrian Partition" (Journal of Laws of 1918 No. 23, item 76). The content of the decree was very laconic - it read as follows:

" Pursuant to the resolution of the Council of Ministers, I hereby decide:

As of 1 January 1919, the Ministry of Justice takes over the administration of justice in the former Austrian partition.

"Done in Warsaw, December 31, 1918."

And in this area – after the takeover of the justice system by the Polish state agencies – the principle of collegiate adjudication dating back to the partition period was maintained, including the institution of jury trials (Materniak Pawłowska 2014).

The administration of justice in the former Prussian partition was taken over by the Act of

26 November 1920 on the ratification of the Polish-German agreement on the takeover of the administration of justice of 20 September 1920 (Journal of Laws of 1920 No. 120, item 794). Here too, the principle of collegiate adjudication was adopted (Journal of Laws of 1920 No. 16, item 152, p. 364).

III. The March Constitution

The Constitution of the Republic of Poland Act of 17 March 1921 - the first Polish fundamental law after regaining independence in 1918 - in its preamble referred to the tradition of the Constitution of 3 May, emphasizing that the task of the Constitution is to regulate the legal order in such a way as to ensure, among other things, social order based on the principles of law and freedom, and equality of citizens.

In Article 1, the Constitution clearly provided for the separation of powers, stating that "The supreme authority in the Republic of Poland belongs to the Nation. The bodies of the Nation in the scope of legislation are the Sejm and the Senate, in the scope of executive power - the President of the Republic of Poland together with responsible ministers, in the scope of the administration of justice - independent courts" (Article 2 of the Constitution, Journal of Laws No. 44, item 267) . Referring to the judicial power, the Constitution in Article 75 provided that the organization, scope and method of operation of all courts would be determined by legislation. However, the Constitution contained provisions providing for collegiality of adjudication, it provided for the election of justices of the peace by the population and the participation of citizens in jury trials (Journal of Laws 1921, item 44, 267 and Journal of Laws 1921, item 52, 334) .

IV. Law on the Organization of Common Courts of 1928

At the time when the Constitution of 17 March 1921 was in force as the fundamental law, the Regulation of the President of the Republic of Poland of 6 February 1928 introduced the Law on the Organization of Common Courts (Journal of Laws of 1928, No. 12, item 93) . The regulation came into force on 1 January 1929. Thus, the Polish court system was finally unified. The regulation provided for a court structure including: municipal courts and justices of the peace, regional courts, courts of appeal and the Supreme Court. Only in the case of municipal courts did the regulation provide that *" Cases falling within the scope of the activities of municipal courts shall be heard by one judge "* (Journal of Laws of 1928, No. 12, item 93) . In the case of regional courts, the provisions regarding the composition were more extensive. Appeals against decisions of district courts were to be heard by a panel of two district judges and one district judge. Commercial cases in the district court were to be heard by one district judge and two commercial judges. Only criminal cases falling within the scope of the juvenile courts were to be heard by a single judge. In all other cases, district courts were to hear cases by a panel of three judges "unless the laws provide otherwise" (Journal of Laws of 1928 No. 12 item 93) . Courts of appeal ruled in a panel of 3 judges. The Supreme Court ruled in a panel of

3 judges, and in some situations in a panel of 7 judges (when the panel presented *" a legal principle raising doubts to be decided by a panel of seven judges "*) (Journal of Laws of 1928 No. 12 item 93) .

V. April Constitution

On 24 April 1935, the Constitution of the Republic of Poland Act of 17 March 1921 - the so-called March Constitution - (with the exception of art. 99, 109-118 and 120) was repealed (Journal of Laws 1935, No. 30, item 227). The Constitutional Act of 23 April 1935 (Journal of Laws 35.30.227) came into force. This fundamental law did not contain any provisions concerning collegiality of adjudication in the justice system. It should be added that the previous constitutional guarantees of independence also disappeared, because the judiciary - as a state body - was placed under the authority of the President of the Republic (Journal of Laws 35.30.227). This was, by the way, the result of previously undertaken (partly successful)

attempts to subordinate the judicial power to political power. The principle of the separation of powers also collapsed. Although this constitution did not contain any provisions on collegiality of adjudication in the justice system and eliminated the principle of the separation of powers, the Regulation of the President of the Republic of Poland of 6 February 1928. The Law on the System of Common Courts and the general principle of collegiate adjudication by courts provided for therein did not change.

VI. Constitution of 1952 as amended

It should be emphasized that the provisions of this fundamental law (or any other previous provisions) did not repeal the validity of the April Constitution of 1935. On April 16, 1998, the Senate of the Republic of Poland adopted a resolution on legal continuity between the Second and Third Polish Republics, in which it stated in point 2 of the resolution that the Constitution of the Polish People's Republic of July 22, 1952 did not repeal the April Constitution of April 23, 1935 and the legal order of the Second Polish Republic (MP of 1998, No. 12, item 200) . The opinion presented by the Legislative Bureau of the Senate Chancellery stated that the April Constitution of 1935 lost its binding force on the principle of *desuetudo* , i.e. due to the long-term non-application of its norms in practice.

The Constitution of 1952, in terms of collegiality in the examination of cases by courts, contained only the provision of Article 59, which stipulated that the examination and resolution of cases in courts shall take place with the participation of lay judges, except for cases specified in the act (Journal of Laws 1976.7.36) .

VII. The Law on the Organization of Common Courts of 1985

The Act of 20 June 1985 - The Law on the Organization of Common Courts in Art. 7.§ 1 provided that *" Common courts shall hear and decide cases collegially, in open proceedings, unless the acts provide otherwise"* (Journal of Laws 1985, No. 31, item 137) . The principle of collegiate adjudication was therefore maintained - although the details specifying the composition of the court were already included in another legal action - i.e. in Act of 17 November 1964 - Code of Civil Procedure (hereinafter referred to as the Code of Civil Procedure). It should be emphasised that until the date of entry into force of this Act, the Regulation of the President of the Republic of Poland of 6 February 1928 - the Law on the Organisation of Common Courts - was in force (although with amendments). The next Act - the Law on the Organisation of Common Courts of 27 July 2001 - no longer contains provisions on the composition of the court or collegiality of adjudication.

VIII. Constitution of 1997

The Constitution of 1997 contains – in terms of collegiality of adjudication – only the provision of Article 182 stating that *" The participation of citizens in the administration of justice shall be specified by statute "*. This provision therefore refers only to the participation of the so-called social factor in adjudication, without referring in any way to the issue of collegiality of adjudication in relation to professional judges.

IX. Composition of the court in the provisions of the Code of Civil Procedure

The provisions of the Regulation of the President of the Republic of Poland, the Code of Civil Procedure of 29 November 1930, in force until 31 December 1964, did not contain any decisions concerning the composition of the court (Journal of Laws No. 10, item 46), apart from the provision of Article 11 (added by the Act of 15 February 1962, which entered into force on 24 March 1962). The provisions of the Regulation of the President of the Republic of Poland, the Code of Civil Procedure of 6 February 1928, the Code of Common Courts, which regulated these matters in detail, were applicable in this respect. From 1 January 1965, the situation changed and the regulations concerning the composition of the court were included in another legal act. On that day, the provisions of the Act of 17 November 1964, the Code of Civil Procedure, entered into force. civil - regulating in detail the issues of the adjudicating panel. Initially, these provisions provided (as was the case earlier) for collegial adjudication in the first and second instance. It should be emphasized, however, that these provisions were subsequently amended many times. In the original version, the provision of art. 47 kpc - establishing the composition of the court in the first and second instance - read as follows (Journal of Laws 1964.43.296) :

Article 47.

§ 1. In the first instance, the court hears cases in a panel composed of one judge as the presiding judge and two lay judges, unless special provisions provide otherwise.

§ 2. All decisions outside the hearing and orders are issued by the presiding judge without the participation of lay judges.

§ 3. The president of the court may order the case to be heard by a panel of three professional judges if he deems it advisable due to the particular complexity of the case.

§ 4. The court of appeal shall hear cases in a panel of three judges even when the regulations permit the hearing of an appeal in closed session."

The provision thus introduced (or rather continued) the principle of collegiality in the examination of a case. In the first instance, it was indeed collegiality that applied only to hearings and consisted in the examination of the case by a professional judge adjudicating with lay judges, but already in the second instance, collegiate adjudication meant the examination of the case by three professional judges – and this even in the situation of adjudication in a closed session. Collegiality therefore applied to practically all categories of cases – and in particular to adjudication by the court of second instance.

This state of affairs continued until 1996, when art. 47 kpc was amended by art. 1 point 4 of the Act of 1 March 1996 amending the Code of Civil Procedure, the regulations of the

President of the Republic of Poland – the Bankruptcy Law and the Law on Arrangement Proceedings, the Code of Administrative Procedure, the Act on Court Costs in Civil Cases and certain other acts (Journal of Laws 96.43.189 art. 1 point 4) – and received the following wording:

"Art47

§ 1. In the first instance, the court, composed of one presiding judge and two lay judges, hears cases within the scope of labour law and social security as well as cases concerning family relations, apart from alimony cases.

§ 2. Decisions outside the hearing and orders are issued by the presiding judge .

§ 3. Cases other than those specified in § 1 shall be heard by a court of first instance composed of one judge, unless specific provisions provide otherwise.

§ 4. The president of the court may order the case to be heard by a panel of three professional judges if he considers it advisable due to the particular complexity or precedent-setting nature of the case."

This amendment has therefore significantly limited the collegiality of the examination of cases in the first instance, limiting it to cases of specific (few) categories. Moreover, also by this amendment, a separate provision was established concerning the composition of the court in the second instance by changing the content of art. 367 § 1 of the Code of Civil Procedure, giving it the following wording (Journal of Laws 96.43.189 art. 1 item 44) :

"Article 367

§ 1. An appeal against a judgment of the court of first instance may be lodged with the court of second instance.

§ 2. An appeal against a judgment of a district court shall be considered by a provincial court, and an appeal against a judgment of a provincial court of first instance shall be considered by a court of appeal.

§ 3. The case shall be heard by a panel of three professional judges. Decisions concerning the evidentiary hearing in closed session shall be made by a court composed of one judge."

The amendment (while significantly limiting the collegiality of hearing cases in the first instance) only slightly departed from the principle of collegiality of hearing cases in the second instance, because it allowed for decisions concerning evidentiary proceedings to be issued in a closed session by a single judge. The change was therefore not significant - and, which should be emphasized, it still left the substance of the case to the collegiate panel.

The next amendment to the Code of Civil Procedure of 2005 (which came into force on 7 October 2005) consisted in changing the content of paragraph 1 of Article 47 by removing the provision concerning social insurance cases, which from then on were to be heard by a single-member panel. The categories of cases heard in the first instance by a collegium were thus further restricted.

The next amendment to this provision - which came into force on 28 July 2007 - further radicalised the provision of Article 47, giving it the following wording:

"Article 47

§ 1. In the first instance, the court hears cases in a panel of one judge, unless special provisions provide otherwise .

§ 2. In the first instance, the court, composed of one presiding judge and two lay judges, hears cases:

1) in the field of labor law on:

a) establishing the existence, establishment or expiry of an employment relationship, recognition of the ineffectiveness of a notice of termination of an employment relationship, reinstatement to work and restoration of previous working or pay conditions, and claims pursued in connection with them and compensation in the event of unjustified or violating the provisions of the law notice and termination of an employment relationship,

b) violation of the principle of equal treatment in employment and claims related thereto,

c) compensation or damages resulting from mobbing;

2) from family relations about:

a) divorce,

b) separation,

c) invalidation of the recognition of a child,

d) termination of adoption.

§ 3. Decisions outside the hearing and orders are issued by the presiding judge.

§ 4. The president of the court may order the case to be heard by a panel of three professional judges if he considers it advisable due to the particular complexity or precedent-setting nature of the case"

The effect of this amendment was therefore the adoption that in the first instance, the rule is for a single-person panel to adjudicate, with the exception of collegial adjudication. However, this change only concerned adjudication in cases heard in the first instance – second instance cases were still heard collegially.

The tendency of the legislator to limit collegiality in adjudication has also become visible in cases examined in the second instance. The Act of 17 December 2009 amending the Act - Code of Civil Procedure and certain other acts changed the content of art. 367 § 4 of the Code of Civil Procedure, giving it the following wording (Journal of Laws 2010.7.45 , the Act entered into force on April 19, 2010) :

"§ 4. A decision on granting and withdrawing exemption from court costs, on refusing exemption, on rejecting a motion for exemption and on imposing on the party the obligation to pay costs and sentencing to a fine, as well as a decision on appointing, withdrawing the appointment, on rejecting a motion to appoint an advocate or legal adviser and on sentencing to a fine and imposing on the party the obligation to pay their remuneration may be issued by the court at a closed session with a single judge.";

The provision significantly expanded the possibility of adjudicating by a single-person panel in cases examined in the second instance. However, adjudication was still left to collegial panels.

Another change took place on November 7, 2019, when Art. 1 point 126 of the Act of July 4, 2019 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws 2019, item 1469) entered into force , adding Art. 367 § 3 of the Code of Civil Procedure, which reads (Journal of Laws 2021,

item 1090) :

"§ 3 [1]. The court may order the taking of evidence by a designated judge, also when this will contribute to the acceleration of the proceedings.",

This was therefore another step towards expanding the possibility of adjudicating by a single-person panel in cases examined in the second instance. However, further adjudication was left to collegial panels.

Another change, even more radical, was made in the Act of 28 May 2021 amending the Act - Code of Civil Procedure and certain other acts.

By virtue of Article 4, point 1 of this Act, an amendment was made to the Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them in such a way that Article 15zzs 1 section 1 point 4 of the amended Act, has the following wording: *" during the period of the state of epidemic threat or the state of epidemic declared due to COVID-19 and within one year from the revocation of the last of them, in cases examined in accordance with the provisions of the Act of 17 November 1964 - the Code of Civil Procedure, hereinafter referred to as the "Code of Civil Procedure": in the first and second instance, the court shall examine cases in a panel of one judge".*

It became the rule that cases in the first and second instance were adjudicated by single-member panels - collegiality was no longer an option.

For the sake of order, it should be added that Article 4, point 4 of this Act allows for the possibility of ordering the president of the court to hear a case in a panel of three judges, if he considers it advisable due to the "particular complexity or precedent-setting nature of the case " , this did not change the fact that collegial adjudication disappeared from the courts. At the same time, Article 6, Section 1 of the amending Act indicates that the above provision also applies to proceedings heard in accordance with the provisions of the Code of Civil Procedure, initiated and not concluded before the date of entry into force of this Act. The adjudicating panel has therefore changed - from a collegial to a single-judge panel - in cases "on the run". As a result, collegial adjudication was eliminated in both the first and second instance. Although this solution was supposed to be temporary, as it was to apply *"During the period of the state of epidemic threat or the state of epidemic declared due to COVID-19 and within one year of the revocation of the last of them"* /../ (Journal of Laws 2021.2095) - it should be noted, however, that such a time frame for the validity of the provision was not sufficient. It did not clearly specify until when the provision would apply (Szmid 2020), and it should be emphasized that it follows from the principles of legislation that episodic provisions should have a clearly defined moment of termination of their validity.

To sum up: the successive changes introduced to the adjudicating panels in first instance courts concerned the elimination of lay judges in favour of - ultimately - adjudicating in a single-person panel only. The social factor was therefore eliminated from adjudication. This aspect of limiting the collegiality of adjudication does not deserve approval. I made a more detailed analysis of the effects of eliminating lay judges from adjudication in another publication (Adamiec-Witek 2023), so there is no need to repeat the arguments contained there. This problem - perhaps as a result of protests from legal circles and others - has already been resolved and as of April 15, 2023, lay judges returned to adjudicating (Journal of Laws of 2023, item 6140).

However, the situation is more complicated for the panels of judges examining appeals. Since the entry into force of the Code of Civil Procedure, appeals (previously revisions) were examined by a panel of 3 professional judges (Article 367 § 3 of the Code of Civil Procedure) . A similar situation occurred in the case of examining complaints – the provision of Article 397 of the Code of Civil Procedure provided for the examination of the case by a panel of three professional judges. The situation was therefore clear, and the composition of the court examining appeals did not arouse controversy or emotions. It should be recalled again that the principle of collegiality in examining appeals was introduced in Poland in 1928 in the already cited Law on the System of Common Courts (Journal of Laws of 1928, No. 12, item 93) . Despite the turmoil that affected Poland, this principle has been maintained since then, because it was perceived as a fundamental principle. However, this principle was violated by the above-mentioned amendment, which introduced the principle of adjudication by a one-person panel in second instance proceedings.

X. Effects of the change introduced

Such a situation, consisting in making such a radical change, caused far-reaching consequences. First of all, it caused a state of legal uncertainty created in common courts - courts and judges had serious doubts as to the composition of the court in which they should hear cases: whether by applying unconstitutional provisions of the act - exposing themselves to the parties to the proceedings raising the objection of invalidity of the proceedings, or whether they should take actions aimed at ensuring respect for the Constitution and international law in the scope of the right to a court (reference number P 13/21) . The composition of the adjudicating court contrary to the regulations results in the most serious defect of the proceedings - invalidity of the proceedings (Art. 379 item 4 of the Code of Civil Procedure) .). The time scope of this provision's validity was also questionable (as discussed earlier). Furthermore, the number of cassation appeals accepted for consideration due to discrepancies in the case law of second instance courts and obvious justification began to grow significantly (III PZP 6/22). Even the "reinstatement" of lay judges to adjudication did not solve the problem.

XI. Reaction of legal communities

Such a change in the regulations was of course widely criticized. Lawyers raised a number of arguments for the inadmissibility of such a change in the regulations. The regulations were criticized by the Commissioner for Human

Rights, the National Bar Council, the Association of Polish Judges "Iustitia", the Polish Association of Judges of Administrative Courts, the Association of Judges "Themis" and the Association of Prosecutors "Lex Super Omnia" (bip.brpo.gov.pl). Ultimately, the District Court of Katowice-Zachód in Katowice (VII Pz 5/22) submitted the following legal question regarding the composition of the court to the Supreme Court for resolution:

a. *Is a court composed of one judge resulting from the episodic provisions of art. 15zzs 1 sec. 1 point 4 of the Act of 2 March 2020 on detailed solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws 2021, item 1090) a "court established by law" within the meaning of art. 6 sec. 1 of the European Convention on Human Rights?*
b. *If the answer to question 2a) is negative, i.e. if it is recognized that the Court composed of one judge is not a "court established by law" within the meaning of Article 6 paragraph 1 of the European Convention on Human Rights, is it justified to disregard the above regulations on the basis of Article 91 paragraph 2? " Constitution of the Republic of Poland and the formation of the composition of the court in the appeal proceedings based on the provisions of the Code of Civil Procedure, and therefore in this case on the basis of Article 767 4 § 1 1 of the Code of Civil Procedure (3-person panel)? "*

In response to this question, the Supreme Court adopted a resolution of the following content, giving it the status of a legal principle:

The examination of the civil case by a second instance court with a single judge based on art. 15zzs 1 sec. 1 point 4 of the Act of 2 March 2020 on detailed solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them (i.e. Journal of Laws of 2021, item 2095, as amended) limits the right to a fair hearing (art. 45 sec. 1 of the Constitution of the Republic of Poland), because it is not necessary for the protection of public health (art. 2 and art. 31 sec. 3 of the Constitution of the Republic of Poland) and leads to the invalidity of the proceedings (art. 379 point 4 of the Code of Civil Procedure) and decided to give the resolution the force of a legal principle and established that the interpretation of the law adopted in the resolution is effective from the date of its adoption (III PZP 6/22) .

XII. Draft amendments to the Code of Civil Procedure - July 2023 - progress of work on the amendment

However, the government did not cease its efforts to definitively end the era of collegial adjudication in civil courts. On 7 July 2023, the Sejm adopted an act amending the Code of Civil Procedure Act, the Act - Law on the Organization of Common Courts, the Act - Code of Criminal Procedure and certain other acts. In art. 1 item 15 of this act, the provision of art. 367 § 3 of the Code of Civil Procedure was repealed.

In Article 1, point 16, after Article 367, Article 367 1 is added in the following wording:

"Art. 367 1. § 1. The court shall hear the case in a panel of one judge, except for the following cases:

1) for property rights, in which the value of the subject matter of the appeal in at least one of the appeals filed exceeds one million zlotys,

2) considered in the first instance by the district court as the competent court, taking into account point 1,

3) heard in the first instance by a panel of three judges pursuant to Article 47 § 4 – which are subject to hearing by a panel of three judges.

§ 2. In cases subject to examination by a panel of three judges, the court shall rule in a closed session by a single judge, except for the issuance of an order referred to in Article 224

§ 3 or a judgment.

§ 3. Whenever the act provides that the court of second instance shall hear a case in a panel of one judge, the president of the court may order the case to be heard in a panel of three judges if he considers it advisable due to the particular complexity or precedent-setting nature of the case." (orka.sejm.gov.pl);

Therefore, the principle – now explicitly introduced into the Code of Civil Procedure – was to once again become the adjudication by a single-judge panel in the second instance.

It is worth describing how the work on this act was carried out – in particular, in terms of repealing Article 367 § 3 of the Code of Civil Procedure and introducing art. 367 1 kpc - i.e. repealing the provision providing for collegial consideration of cases in the second instance and introducing a provision providing for the consideration of these cases (with minor exceptions) by a single-person panel. The government bill was submitted to the Sejm on 9 May 2023, and on that day it was submitted for first reading. The time set for public opinions and consultations was - despite the extensiveness of the bill - from 14 to 21 days (Print No. 3216) . This bill (at that time) did not contain a provision repealing art. 367 § 3 kpc and introducing art. 367 1 kpc - hence the justification for the bill did not mention changing the previous provisions on collegiate adjudication in the second instance. Despite the short time set for public consultations, many organizations and institutions commented on the changes - most of them were critical opinions (legislation.rcl.gov.pl). Of course, none of the organisations or institutions referred to the possibility of eliminating collegial adjudication in second instance courts, because there was simply no such provision in the draft submitted for consultations.

The first reading of the bill took place on May 26, 2023, and on the same day the bill was referred by the Marshal of the Sejm to the Special Committee for Changes in Codifications for consideration (sejm.gov.pl). The change providing for the repeal of Article 367 § 3 of the Code of Civil Procedure and the introduction of Article 367 1 of the Code of Civil Procedure appeared only in the report of the Special Committee for Changes in Codifications - the Standing Subcommittee for Amendments to Civil Law dated June 12, 2023 (print 3216).

Of course, after considering this bill at the meetings of June 15, 2023, the Committee proposed: " The High Sejm deigns to adopt the attached bill " (print 3216). No justification for the proposed changes was prepared.

The second reading of the bill took place at the Sejm session on July 6, 2023 – during this session, amendments to the bill were submitted by the opposition. The Left and KO submitted amendments, among others, in the scope of the provision that interests us – i.e. they proposed deletion of these amendments (print 3365-A). On July 7, 2023, the "Additional report of the Special Committee for Changes in Codifications on the government's draft act amending the act - Code of Civil Procedure, the act - Law on the Organization of Common Courts, the act - Code of Criminal Procedure and certain other acts" was submitted. In the report, the Committee requested the rejection of the amendments submitted by the opposition - including the amendments concerning the repeal of Article 367 paragraph 3 of the Code of Civil Procedure and the introduction of Article 367 of the Code of Civil Procedure (print 3365-A) . On the same day (July 7, 2023), the third reading of the bill took place and it was adopted. On July 11, 2023, the bill was submitted to the President and the Speaker of the Senate (gejm.gov.pl). The Senate rejected this bill, raising - in terms of the provisions practically eliminating collegiality of adjudication - the following:

" Changes to the Code of Civil Procedure relating to adjudicating panels, in particular in appellate and complaint proceedings, replacing the principle of collegiality of these proceedings with the principle of adjudication by a single-judge panel, due to the significance of these regulations and their impact on the procedural guarantees of the parties to the proceedings should be subject to a broader social debate, and their potential implementation should be preceded by a sufficiently long vacatio legis . The justification for an in-depth analysis of this type of changes results from the need to ensure the compliance of this regulation with the constitutional right to a court (Article 45, Section 1 of the Constitution), which consists of the principle of procedural justice, obliging the legislator to shape the court procedure in a way that does not violate the procedural rights of the parties. Respecting these rights is a condition for the proper and fair consideration of the case" (sejm.gov.pl).

On August 16, 2023, the Report of the Special Committee for Changes in Codifications on the Senate resolution on the act amending the act - Code of Civil Procedure, the act - Law on the organization of common courts, the act - Code of Criminal Procedure and certain other acts was submitted. In the report, the Special Committee stated *" The High Sejm deigns to reject the Senate resolution "* (sejm.gov.pl). Of course, the Senate resolution - at the Sejm session on August 17, 2023 - was rejected with the following vote distribution: 234 in favor, 217 against, 0 abstentions (sejm.gov.pl) On August 18, 2023, the act was submitted to the president for signature (sejm.gov.pl). The president did not hesitate long to sign it, because on August 28, 2023, he signed the act (sejm.gov.pl). The act was announced on September 13, 2023 (sejm.gov.pl), and entered into force on September 28, 2023. Thus, the era of collegial adjudication in civil cases - including in the second instance - has definitely ended.

XIII. THE NEED FOR COLLEGIAL ADJUDICATION – VIEWS OF THE DOCTRINE

The need for collegial adjudication has been emphasized by the doctrine for a long time. Already during the work on the unification of the Polish legal system after regaining independence, it was emphasized that : *"In order to decide whether one or two types of courts should be established first degree, you must first realize whether it is desirable to stop a mixed system of collegial courts alongside individual courts, or declare oneself in favor of the collegiate courts alone or the individual courts alone. They argue against the need for collegial courts that in a group of several the judges are usually composed of one more capable and two weaker ones, and the result is that that either the weaker ones follow the opinion of the more capable ones, and then their participation is unnecessary, or they will vote capable, and then they are downright harmful. In such groups, usually only one knows the exact state of affairs, and the responsibility of individuals is reduced. The individual judge, feeling that the responsibility rests on him, puts more work, attention and energy, so it works faster and better. These arguments, although very brilliant, are only seemingly accurate. If we are to compare the value of an individual judge with the value of a group of judges, then we have to leave. from the assumption that in both cases we are dealing with material of the same quality, so individuals who are equally willing to learn about the matter and have the same sense of responsibility . Exceptions undoubtedly occur, but they should not be generalized. And further It is common knowledge that district courts nowadays select their members from among the more capable, not from the weaker individual Judges and so undoubtedly will be in the future. But even a judge with lesser abilities is by no means unnecessary in the adjudicating panel. His doubts, his criticism will contribute in every case for a more thorough, and therefore better, examination and judgment of the case. The value of panels of judges lies in the fact that they are composed of people of different mentalities. One judge is more gullible, another more critical, one is like that, the other one social and economic views, and this diversity of minds are influenced by various factors, such as upbringing, the environment in which one lives , personal sensitivity, etc. This variety of mentality causes that when assessing evidence, one judge will believe a witness and the other will not, or when assessing the needs of society, one will consider in a given case "good faith", "due "urgency", "intention to harm", one may think that the compensation is appropriate in this, the other in a different amount. This subjectivity of individual units is equalized by the cooperation of several people and therefore one can expect from the whole group more objective assessment than from an individual. Often the judge is also influenced criticism and opinions of his colleagues will judge the matter differently both from the standpoint the law, as with the needs of society than he would do if he were left to his own devices,*

under the influence of his own views. The superiority of the individual judge is finally based on the fact that he is in closer is in contact with the population, so he knows better the personal, economic and social issues relations of that part of the country whose affairs it is to judge. However, it can be boldly stated that these relations do not change so much that a distance of a dozen or several dozen kilometers played a decisive role. Groups of several judges are a more perfect judicial body than individual judges (Jaworski 1922).

The problem of the superiority of collegial panels over single-judge panels was also raised by other lawyers of the interwar period (Waśkowski 1930). It should also be emphasized that the same researchers criticized the arguments of supporters of single-judge courts based mainly on premises related to savings and the need to speed up proceedings, arguing that in the administration of justice one cannot prioritize the speed of proceedings over its quality. It is hard to deny these arguments – although they are already 100 years old, or almost 100 years old. Also currently, the views of the doctrine are quite consistent on this issue – the need for collegial adjudication is emphasized. It is obvious that collegial adjudication was a principle of Polish criminal, civil and administrative court procedures. This principle significantly strengthened the independence and impartiality of judges, which influenced the fairness of the proceedings. While single-judge adjudication can be allowed in the first instance, in the appeal proceedings we are dealing with the questioning of the judgment by at least one of the parties, who demand a thorough familiarization with the case. When three judges meet, there is a confrontation of different sensitivities, different experiences, different views on the regulations that may escape the attention of one judge (prawo.pl). Collegiality not only strengthens the impartiality, independence and impartiality of adjudication, but also increases the legitimacy of the court's decision. (Zembrzuski 2023) It is difficult to find arguments to refute these claims.

XIV. Conclusion

The analysis of the provisions on the composition of the court leads to the conclusion that over the years the legislator has consistently and systematically departed from the principle of collegiality in the examination of cases. Over the years, the principle of a single-person adjudication in the first instance has become established. Such changes were justified by maintaining the collegiality of the appeal panels. The fate of the case was no longer decided by six judges, but still by four (rp.pl). The currently introduced regulation – restoring the collegiality of adjudication in a few first-instance cases by returning lay judges to adjudication and introducing a new regulation providing for the examination of cases in the second instance by a single-person panel – as a rule – is unacceptable. Such solutions violate both the Constitution and EU law. In the matter of EU law, it is worth mentioning the provision of Article Article 6 paragraph 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 the merits of any criminal accusation against him. /…/ (Journal of Laws 1993, item 61, item 284) . This provision therefore obliges the parties to the Convention to organise their own justice system in such a way that the courts and court procedures meet all the requirements resulting from this provision. It therefore follows from the provision cited that the requirement of a proper 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). A similar position on this issue is also taken by the Commissioner for Human Rights (III CZP 73/21).

Departing from the principle of collegiality of adjudication cannot be reconciled with the solutions provided for in the Constitution. The Bar Council clearly expressed this in its comments (orka.sejm.gov.pl) to print 3216 (thus to the draft act already providing for the repeal of art. 367 § 3 of the Code of Civil Procedure and the introduction of art. 367 1 of the Code of Civil Procedure), writing that *" To sum up, it should be pointed out that the far-reaching limitation of the role and significance of collegiality of adjudication in civil cases is an unfavourable and systemically questionable solution. The postulated solutions deserve an unequivocal and negative assessment. The formation of the system and the position of the bodies adjudicating court disputes is an important component of the right to a court. The institution of the composition of the court, which requires an optimal definition of a single person and collegiality of adjudication - should be perceived in the context of the implementation of the right to a competent court, guaranteed in art. 45 sec. 1 of the Constitution of the Republic of Poland. The regulation concerning the composition of the court should therefore not disregard systemic and constitutional conditions. The issue of the correct formation of the composition of the court should also take into account that any irregularities committed in this respect are included in the category of reasons for invalidity of the proceedings. Therefore, the legislator should be expected to adopt such solutions that will not cause difficulties in their application, but will also not raise doubts from the perspective of guaranteeing the right to court and the right to a fair trial "*. And this opinion should be fully shared. The importance of collegiality of adjudication – especially in appeal proceedings – was also emphasized by the Supreme Court, indicating that the collegiality of the adjudicating panel – considered to be the domain of continental legal orders – being a well-established principle in appeal proceedings, ensures a higher standard of appeal review, as it allows for the shaping of decisions through discourse and the clash of positions, strengthens the impartiality, independence and impartiality of adjudication and increases the legitimacy of the court's decision in the public perception, and is thus desirable from the point of view of the proper protection of the rights of the parties and participants in the proceedings. This position should also be shared. It should also be mentioned that the change in the regulations that practically eliminates collegiality of adjudication in cases examined in the second instance cannot be reconciled with the principle of protecting trust in the state and the law it establishes, guaranteed by Art. 2

of the Constitution (Journal of Laws No. 78, item 483) . After all, it follows from this principle that the addressees of legal norms have the right to expect that the provision will not be changed to their disadvantage in an arbitrary and surprising manner. This guarantee is of particular importance for the fundamental right of an individual to a court in a democratic state of law.

We need to ask ourselves what these changes are really for? A fairly convincing explanation seems to be the opinion that the Ministry of Justice is not interested in increasing the efficiency of the courts, but in reducing or hiding disputes between judges of the old and new appointments and difficulties in appointing mixed panels. Moreover, it should also be emphasized that justifying the departure from collegial adjudication with the need to increase the efficiency of the courts cannot stand - in a democratic state, the pace of civil proceedings (but also criminal or administrative proceedings) cannot be accelerated at the expense of their quality.

It is also worth *"/../ to recall the well-known truth that the sense of justice represented by the general public is a factor that determines the fairness of a judgment. Therefore, the greater the number of judges, the greater the probability of the accuracy of the sense of justice. Therefore, if the basis for the decision was verified by several judges, there is a greater probability that other judges would have decided in the same way. A judgment issued by a collegial panel is the result of deliberation, discussion, and a clash of different views and different points of view on the same issues. This in turn allows for better control of the correctness of the course of reasoning and argumentation. Collegiality is therefore a more democratic form, ensuring a thorough and comprehensive examination of the case. A judge, knowing that the entire board stands behind him and shares responsibility with him, feels more independent and acts more freely than when he adjudicates as a single judge. It is easier to influence a single-person court than an entire board, especially in those countries where the court administration or even sometimes political parties have a great influence on the judiciary. A. Mogilnicki aptly stated that increasing the responsibility of a single-person judge greatly increases his fear of issuing a judgment that is contrary to the intentions of the government or ministry. Therefore, the examination of the case by the board ensures not only the thoroughness of the decisions issued, but also their impartiality. Moreover, the decisions of the board, which are the result of cooperation of several judges, have more authority than the decisions of a judge adjudicating alone /.../* (Skrętowicz 1983). The arguments raised by the author remain relevant today, and even – despite the fact that the text in which they were presented dates back to 1983 – in some parts they seem to be more relevant than at the time they were written.

In conclusion, it should be stated that the squandering of the achievements in building democracy developed over almost 100 years by the proposals of "reforms" that arouse outrage in the legal community - and not only - is evidence of the deep crisis in which our country finds itself.

XV. REFERENCES

Konstytucja z dnia 17 marca 1921 r. (Dz.U.1921.44.267 i Dz.U.1921.52.334)

Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r. (Dz.U.1935.30.227)

Konstytucja Rzeczpospolitej Polskiej z dnia 22 lipca 1952 r. (Dz.U.1976.7.36)

Konstytucja Rzeczpospolitej Polskiej z dnia 2 kwietnia 1997r. (Dz.U.1997.78.483)

Dekret z 8 lutego 1919 r w przedmiocie objęcia zarządu wymiaru sprawiedliwości

w b. zaborze austriackim (Dz. Praw z r. 1918 Nr. 23, poz. 76).

Rozporządzenie z dnia 28 marca 1920 r. o zmianie niektórych przepisów niemieckiej ustawy o ustroju sądownictwa. 57) (Dz. urzęd. z r. 1920 Nr. 16, poz. 152, str. 364)

Rozporządzenie z dnia 23 czerwca 1920 r o dalszej zmianie niektórych przepisów niemieckiej ustawy o ustroju sądownictwa i o uproszczeniu postępowania w cywilnych sprawach spornych. 58) (Dz. urzęd. z r. 1920 Nr. 34, poz. 304, str. 689).

Ustawa z dnia 26 listopada 1920 r. o ratyfikacji układu polsko niemieckiego w przedmiocie przejęcia wymiaru sprawiedliwości z dnia 20 września 1920 r.(Dz. Ustaw z r. 1920 Nr. 120, poz. 794)

Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 prawo o ustroju sądów powszechnych (Dz.U.1928.12.93)

Rozporządzenie Prezydenta Rzeczypospolitej z dnia 29 listopada 1930 Kodeks postępowania cywilnego (Dz.U.1930.83.651)

Ustawa z dnia 15 lutego 1962 r o zmianie przepisów postępowania w sprawach cywilnych (Dz.U. Nr 10, poz. 46,)

Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (t.j.Dz.U.2023.1550)

Ustawa z dnia 20 czerwca 1985 r Prawo o ustroju sądów powszechnych (Dz.U.1985.31.137)

Ustawa z dnia 1 marca 1996 r. o zmianie Kodeksu postępowania cywilnego, rozporządzeń Prezydenta Rzeczypospolitej - Prawo upadłościowe i Prawo o postępowaniu układowym, Kodeksu postępowania administracyjnego, ustawy o kosztach sądowych w sprawach cywilnych oraz niektórych innych ustaw. (Dz.U.1996.43.189)

Ustawa z dnia z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych (t.j. Dz.U.2023.917)

Ustawa z dnia 1 lipca 2005 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (Dz.U.2005.169)

Ustawa z dnia 15 marca 2007 r. o zmianie ustawy - Kodeks postępowania cywilnego, ustawy - Kodeks postępowania karnego oraz o zmianie niektórych innych ustaw Dz.U.2007.112.766

Ustawa z dnia 17 grudnia 2009 r. o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U.2010.7.45)

Ustawa z dnia 4 lipca 2019 r. o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U.2019.1469)

Ustawa z 28.5.2021 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw, (Dz.U. 2021.1090)

Ustawa z dnia 7 lipca 2023 r o zmianie ustawy Kodeks postepowania cywilnego , ustawy Prawo o ustroju sądów powszechnych , ustawy Kodeks postępowania karnego oraz niektórych innych ustaw (Dz.U. z 2023 r. poz. 1860)

Uchwała SN z dnia 26 kwietnia 2023 r. III PZP6/22

Konwencja o ochronie praw człowieka i podstawowych wolności z dnia 10 lipca 1993 (Dz.U.1993.61.284)

Wyrok TSUE z 25 lipca 2018 r., C 216/18(Dz.U.UE.C.2018/328/22

Uchwała Senatu RP z dnia 28 lipca 2023 w sprawie ustawy o zmianie ustawy – Kodeks postępowania cywilnego, ustawy Prawo o ustroju sądów

powszechnych , ustawy Kodeks postępowania karnego oraz niektórych innych ustaw

Wł. L. Jaworski, Prawa Państwa Polskiego.

M. Korpalski, Trzy to więcej niż jeden – o usuwaniu kolegialności w postępowaniu cywilnym".

L. Krzyżanowski, Sądownictwo powszechne w II Rzeczypospolitej (1917-1939) założenia organizacyjne, budowa struktur, funkcjonowanie.

Markiewicz K., Wpływ regulacji „covidowych" na zasadę niezmienności (stabilności) oraz kolegialność składów sądów odwoławczych,

M. Materniak Pawłowska, Z dziejów sądów przysięgłych na ziemiach polskich w XIX wieku.

A. Moglinicki, Kpk wymaga zmian .

W. Sanetra, Sąd właściwy w rozumieniu Konstytucji RP.

E. Skrętowicz, Z zagadnień kolegialnego orzekania w sprawach karnych

W. Skrzydło, Konstytucja Rzeczypospolitej Polskiej komentarz .

P. Tuleja (red.), Konstytucja Rzeczypospolitej Polskiej. Komentarz.

E. Waśkowski, Kolegialność , czy jednoosobowość.

E. Waśkowski, Zasady procesu cywilnego.

T. Zembrzuski, Kolegialność umacnia bezstronność i niezależność.