

Covid rules will go before the Supreme Court

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A regional court sent a legal question to the Supreme Court while hearing an appeal against a decision. / shutterstock

Can provisions that change the composition of the court hearing a case from three judges to a single judge be disregarded? This was the question sent to the Supreme Court by one of the regional courts.

The Regional Court in Katowice submitted to the Supreme Court its doubts regarding the solutions resulting in the fact that during the pandemic and one year after its end almost all civil cases in common courts are heard by a court sitting as a single judge. The Court did so even though it is aware that the issues it raised may justify referring the question to the Constitutional Tribunal.

- I have chosen this path because of the ongoing constitutional crisis in our country and the real possibility of far-reaching defects in the proceedings before the Constitutional Tribunal, explains Krystian Markiewicz, a judge at the Regional Court in Katowice and the author of the question to the Supreme Court.

Lowering of the standard

The regional court sent the legal question to the Supreme Court while hearing an appeal against a decision. Initially, the case was heard by a panel of three

professional judges. However, when the amendment to the Civil Procedure Code (Journal of Laws 2021, item 1090) came into force, the case was to be further conducted by a single judge.

The court in Katowice had doubts as to whether or not in such a situation it should disregard the controversial provisions. Pursuant to Article 390 (1) of the Civil Procedure Code (see image), it adjourned the case pending before that court and presented the legal issue to the Supreme Court. The Regional Court is of the view that the provisions adopted under the pretext of COVID-19, which currently govern the process of formation of adjudicating panels, are contrary to many procedural principles.

- There is no doubt that due to the amending act there is an interference by the political power with the principle of continuity and invariability of the composition of the court hearing the case, Krystian Markiewicz argues.

This in turn leads to the lowering of the standard of legal protection established among others by the European Convention on the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights.

- It is generally accepted that the composition of the court as a collective body ensures a higher standard of jurisprudence, and thus realizes at a higher level the assurance of the parties' right to a court, explains Markiewicz.

He emphasizes that a single-person panel is more exposed to any possible pressure and other attempts to unlawfully influence the ruling.

Which is better – three or one?

Advocate Adam Zwierzyński, Partner at Radzikowski, Szubielska i Wspólnicy, is of a similar view. In his opinion, a multi-person panel contributes to a more thorough examination of the case and reduces the risk of errors. - There is an old saying that three poor judges can make a good adjudicating panel. This is because decisions taken collectively are the result of a clash of views, they are the outcome of discussions, different views on the same issues, he emphasizes.

Apparently the Ministry of Justice takes a different stance. Justifying the need for the controversial changes, it stressed that “there is no objective and verifiable data allowing the assumption that a judgment given by a single judge is less just than one given by an expanded panel, or that a case has been less thoroughly examined by one judge than by three”.

- This explanation is a failed attempt to deny the experience of practice and legal science. It is obvious to all but the authors of the legislative bill that a multi-person composition ensures greater professionalism and level of guarantees required both in special cases, e.g. for incapacitation, and in cases on appeal, believes the author of the question to the Supreme Court.

As for the controversial amendment's infringement of the principle of the invariability of the composition of the panel, Judge Markiewicz reminds us that this principle, along with the random allocation of cases to judges, was introduced by the current government – under the slogan of increasing the transparency and impartiality of the court.

- Now, four years after these changes were introduced, under the pretext of the fight against COVID-19, the legislator is backing down from its idea represented by the slogan: “the principle of unchangeable composition”, emphasises the author of the question to the Supreme Court.

He notes that this was happening at a time when those in power were abandoning other Covid-related restrictions. – Therefore, it is difficult to find rational and proportionate reasons for introducing such systemic changes that violate the right to a competent court established by statute, Markiewicz concludes.

Court presidents of and lay judges

The court in Katowice also asked the Supreme Court about the role of court presidents in determining the composition of panels. The questioned regulation allows them to order a three-judge panel when they deem it advisable due to the particular complexity or precedential nature of the case. This means that maintaining the standard of hearing cases by multi-person panels depends on the arbitrary decision of the court president, i.e. an administrative role appointed by the Minister of Justice.

- Such regulations in the current systemic situation, taking into account the position of the Minister of Justice, who is at the same time the Prosecutor General, create the possibility of undue influence of the administrative factor and the executive power on the constitutional and European standard, which is the hearing of a case by a court sitting as a panel established by statute”, Judge Markiewicz believes.

He adds that the competence of the president of the court as an administrative role should be limited to activities of an administrative nature, which is not the issue of the proper composition of the court.

As a side note, the Regional Court in Katowice also notes that the questioned regulations eliminated lay judges from the adjudication process. As we wrote in DGP, the Act has already been challenged in this respect and brought to the Constitutional Tribunal by a district court in Katowice.

However, the Ministry of Justice does not see a problem in this respect either. As can be seen from the reply the Ministry gave to a group of MPs, there is no question of a breach of the Constitution. The Ministry of Justice pointed out that Article 182 of the Constitution states only that the participation of citizens in the administration of justice is determined by statute. “The discretion of the legislator in determining the

types and rank of these cases is broad”, said Sebastian Kaleta, Deputy Minister of Justice.

DGP asked the Ministry of Justice for a response to the assertions brought forward in the legal question of the Regional Court in Katowice. We are waiting for the reply.
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