More and more questions about horizontal interlocutory appeals at the Supreme Court

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Life is much more complicated than the legislator thought, as shown by the legal question referred to the Supreme Court. / *ShutterStock*

The more time has passed since the reform came into force, the more doubts there are as to when an interlocutory appeal should be heard by a court of second instance and when it should be heard by the same court sitting as a panel of different judges.

Before 4 November 2019, horizontal interlocutory appeals, i.e. those heard by a different panel of the court of the same instance, were used only in appeal proceedings, and only marginally. However, the decision-makers in the Ministry of Justice came to the conclusion that it is a waste of time for the appeal courts to decide minor issues such as whether refusal to exempt a party from costs or appoint a state-funded attorney was well founded. Because the outcome is longer proceedings and higher costs as a result of files being moved between courts, which in turn is a perfect tool for procedural obstruction.

Not everything can be predicted

Therefore, in a major reform of the Code of Civil Procedure, the rule was reversed. To put it simply, it can be said that now horizontal interlocutory appeals are the rule, and the courts of second instance are to examine only appeals against decisions ending the proceedings. In addition, according to Article 9(4) of the amendment (Journal of Laws 2019, item 1469), the examination of appeals filed before the date of entry into force of the Act is carried out in accordance with the previous provisions. But life is much more complicated than the legislator thought, as shown by the legal question referred to the Supreme Court by the District Court of Gdańsk-Południe.

The takeover of power in the Supreme Court is getting closer. The "old" judges kept in check

In April 2019, i.e. even before the change in the law, this court dismissed a claim for payment and ruled on the legal costs. The claimant filed an appeal against this judgment, which the court rejected by decision of 24 September 2019, and did the same with interlocutory appeals against the return of the motion to exclude the judges. In respect of this decision, the claimant not only filed an interlocutory appeal on 9 October, but also requested the exclusion of the judge who issued it, and added a motion for exemption from the fee on the interlocutory appeal. On 4 February 2020, i.e. after the change in the law, the court rejected the interlocutory appeal against the decision of 24 September, but the claimant filed a request for a statement of reasons, exemption from the fee ... and an interlocutory appeal against the rejection of the interlocutory appeal.

Subsequently, the judicial official dismissed the request for exemption from the fee, then rejected the unpaid request for a statement of reasons (this decision was upheld by the court). Then the court rejected the unpaid request for a statement of reasons, which was also appealed by the claimant. The interlocutory appeal was submitted to the court of second instance. The Regional Court in Gdańsk decided, however, that in accordance with the new regulations, it was the district court that had jurisdiction to hear the interlocutory appeal. The Regional Court in Gdańsk, when examining it, found that on the one hand, the appealed decision is a decision on the rejection of the interlocutory appeal as referred to in Article 3941a(12) of the Code of Civil Procedure, and this should indeed be examined by a different composition of the court of first instance. On the other hand, however, at the same time it fulfils the features of a decision ending the proceedings within the meaning of Article 394(1) of the Code of Civil Procedure and thus should be examined by the court of second instance.

Does it or does it not end the proceedings in the case

– According to the view settled in the jurisprudence of the courts and legal writings, decisions "ending proceedings in the case" are those that close the way for a party to have a substantive decision made while at the same time, after adoption such decisions, the court is released from further procedural actions. That is, they are decisions which, by becoming final and non-appealable, permanently close the way as to the merits of the case at a given court instance, the district court noted, presenting the issue to the Supreme Court. In the opinion of the court that asked the question, the appealed decision cannot be reduced to merely a decision on the rejection of an interlocutory appeal and cannot be detached from the procedural situation in which it was issued and the consequences of its issuance.

The Regional Court has a different opinion

However, it follows from the position taken by the auditing judges for civil matters at the Regional Court in Gdansk that in a case such as the one in question, the decision does not end the proceedings in the case, because it "does not refer to the subject matter of the case (i.e. the appeal to be examined), but to the decision rejecting the interlocutory appeal against the decision rejecting the main appeal".

In the opinion of Adam Zwierzyński, Partner at Radzikowski, Szubielska i Wspólnicy, although the legal question resulted from the particular facts of the case, it is also the effect of the weakness of the legislator, who could and should have foreseen the situation.

– The specificity of the case lies in the fact that as a result of errors in transitional provisions, a decision was issued which today would be issued by a court of second instance, and for the assessment of which new regulations must be applied, which do not provide for such a situation, explains Adam Zwierzyński. – The legislator could have avoided this problem if in Article 9(4) he had specified that the provisions in the previous wording should be applied to examine appeals filed but not examined before the date of entry into force of the Act and appeals connected with the review of their admissibility. However, this is not the worst mistake concerning interlocutory appeals in the amendment. Suffice it to say that the question described is the 30th question to the Supreme Court concerning interlocutory appeals, points out the lawyer. – Due to an obvious legislative bungle we have, for example, a doubt whether the decision to reject an interlocutory appeal should be issued by one or three judges. And let's remember that an incorrect composition of the court means invalidity of proceedings, points out the lawyer. ©℗

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