The pandemic appeal, or collective adjudication to be axed [COLUMN]

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Single-person adjudication also has advantages, of course.

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From 12 February, hotels, cinemas and theatres will be open. Ski slopes and swimming pools have started operating. Supermarkets have been open for a long time, and they are crowded almost like in the old days. So why, in the name of protection against the pandemic, are there plans to dismantle further procedural guarantees for the parties? In the Sejm there is a legislative bill proposing an amendment to the civil procedure (paper no. 899). It provides for changes to, among others, Article 15zzs1 of the so-called COVID-19 Act of 2 March 2020 (Journal of Laws 2020, item 1842 as amended). During the period of the pandemic and one year after its end, all civil cases at both first and second instance are to be heard by a single-judge panel.

While this is not a major change in first instance proceedings (here collective adjudication is an exception), it is a revolution in appeal proceedings. Since the pre-war times, the appeal (with the exception of summary proceedings) has been heard by three professional judges.

The reasons given for the amendment are puzzling in this respect. The explanatory memorandum refers to the epidemic threat posed by having three people in one room (although most offices would have to be closed for this reason). However, the author of the bill also states that in principle it is irrelevant whether a case is heard

by one or three judges. There is no objective and verifiable evidence, the author adds, that a judgment given by a single judge is less just than one given by an expanded panel. The suppositions appearing in this regard are, it is suggested, deeply unfair to the judges and prove a lack of knowledge of their working methods. Doubts about single-member panels are seen by the legislator as a vote of no confidence in the knowledge and skills of hard-working judges in first instance courts, who must hear cases as thoroughly and fairly as their colleagues in higher courts.

The first conclusion from reading the explanatory memorandum is that the change – despite the pretext of the pandemic and the announced temporary nature – is planned to stay on a permanent basis. The thought is to abandon for good the principle of collective adjudication by the panel on appeal. Why else explain that a single-person panel is no worse than a collective one? The second conclusion is that this is not about the pandemic, but about improving statistics at the expense of the quality of adjudication and the public image of the judiciary. The third conclusion is that emotions seem to have crept into the work on the amendment. One-person appeal proceedings, especially in the current situation (where trust in the courts is often publicly undermined), are a terrible idea, though.

The essence of the justice system in a democratic state is the impartiality and objectivity of the adjudicating panel (with the related independence of the court and autonomy of the judge). What use is a quick decision if it is biased or the circumstances in which it was made are questionable? What matters is not only the image of the case in the eyes of the parties, but also (or perhaps above all) its social image. A judgment handed down in unclear circumstances will not gain acceptance and will increase distrust in the courts. It is not only the rightness of the decision that is important (and this is what the author of the bill focused on), but also the perception that the decision was made fairly. In a civil trial someone always loses and is dissatisfied with the outcome. Procedural solutions that reinforce the belief that a decision has been made in fair proceedings are invaluable.

The accumulation of experience and the related higher quality of the ruling itself is only one of the advantages of a multi-person panel over a single-person one. Collective adjudication, along with openness, instances and the right to a statement of reasons, serves precisely to strengthen the impartiality of the court. Each of these institutions has been eroded in recent years. Openness is already just a dummy (in principle, there is no audience at the hearings today, nor are there any plans to introduce generally available online broadcasts of hearings). The rule of instances has been largely abandoned in respect of interlocutory appeals (the principle now is that they are decided by the same court). Statements of reasons must be paid for since recently. Courts no longer give reasons for appealable decisions *ex officio*. Let us therefore at least preserve the collective adjudication in the appeal procedure.

The multi-person panel in appeal proceedings is not only a feature of civil proceedings. It is present in administrative proceedings (local boards of appeal), proceedings at administrative courts (Supreme Administrative Court), criminal proceedings (in the most serious cases, appeals are heard by a panel of even up to five judges) and disciplinary proceedings (e.g. in the advocates' bar association). This is an old, well-established and proven principle. Its change should be justified by something more than the lack of evidence for greater fairness of collective rulings.

Collective adjudication does not come from nothing. Years of experience have shown that a judge ruling alone is more susceptible to pressure. It is more difficult to unlawfully influence a panel of several persons. Being aware that the whole panel is responsible for reaching a decision, a judge can act more freely and confidently than a judge who adjudicates on their own. Collective decisions enjoy greater gravity and authority, inspire greater confidence and are more likely to be accepted. An expanded composition therefore provides greater guarantees of the independence and impartiality of judges. Of course, a multi-person composition also contributes to a more thorough examination of the case and reduces the risk of errors. The decisions of a panel of judges are the result of a clash of views, discussions, different viewpoints on the same issues. Such decisions balance out the personality traits of the judges, the panel of several persons gives a better chance of getting to the truth, and is a more democratic form. There is an old saying that three poor judges can make a good adjudicating panel.

All of these advantages are particularly important in appeal proceedings, where judges review the effects of the work of other judges. The idea that a decision on appeal should be issued by a single judge in closed session (which is essentially what the amendment aims to do) is unacceptable. As for the argument that the collective composition is a vote of no confidence in the judges of lower courts, it should be noted that the same could be said of appeals. It is, after all, a measure intended to change or set aside the judgment of the court of first instance. Let us therefore hope that the next idea to streamline the civil procedure will not be an amendment to the Constitution and repeal of Article 176 (the principle of two-instance court proceedings).

Single-person adjudication also has advantages, of course. Proceedings are then less costly and faster. From an organisational point of view, it is not possible to introduce extended panels starting from the courts of first instance. Collective adjudication limited to appeal proceedings is an expression of realism and a compromise that should be maintained.

The right to a court (including the right to an impartial court) cannot be restricted even under martial law (Article 233(1) in conjunction with Article 45 of the Constitution). All the more so, let us not do so in a state of epidemic, which the

legislator did not recognise as a threat justifying the introduction of a state of emergency.

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