

Dispute Resolution

Important regulations

On 26 April 2023, the Polish Supreme Court adopted the following resolution (in a seven-judge panel):

The hearing of a civil case by a second instance court in a single-judge panel (under the COVID-19 regulations) restricts the party's right to a fair hearing (Article 45(1) of the Constitution of the Republic of Poland) as this limitation is not necessary for the protection of the public health (Articles 2 and 31(3) of the Constitution of the Republic of Poland), and leads to the invalidity of the proceedings (Article 379(4) of the Polish Code of Civil Proceedings).

The Supreme Court decided that this resolution should be a rule of law, which means that the presented interpretation is binding for the Supreme Court, and, in reality, should be applied by the state courts by its referent power.

This means that, as of the date of the resolution, civil cases in the second instance court should be heard by a three-member panel. According to the resolution, a single-member panel will lead to the nullity of the proceedings. This approach, most likely, will not apply to small-claim cases, which under the Polish Code of Civil Proceedings are resolved by a one-judge panel.

The resolution has created considerable uncertainty in the courts and has raised many questions.

The interpretation presented in the resolution is effective as of the date of its adoption. However, the announcement of the ruling was published on the Supreme Court's website on Wednesday, 26 April 2023, at 1:55 p.m. It is therefore unclear whether the cases heard by the improper panel – in the opinion of the Supreme Court – on that day before or shortly after the resolution will also be declared invalid. Moreover, it is disputable how the cases resolved in the second instance court by a single panel before the resolution was issued will be treated when they now come for the Supreme Court's examination.

As we see, the courts in Poznań and Warsaw reacted very quickly, and as of 27 April 2023, the cases were heard by three judges, or the hearings were postponed. For cases scheduled after 26 April 2023, the courts will have to provide three-judge panels, which certainly will not be easy to arrange at such short notice. This, in turn, will result in the prolongation of the pending cases.

Judges and counsels are awaiting the written justification of the resolution, which might dispel at least some of the doubts resulting from the resolution and its application.

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