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THE ISSUE OF ELECTRONIC DELIVERY IN CASES OF APPEALS AGAINST RESOLUTIONS OF THE NATIONAL COUNCIL OF THE JUDICIARY

SUMMARY

Electronic delivery in cases of appeals against resolutions of the National Council of the Judiciary is sometimes of key importance for the resolution of cases by the Supreme Court. The issue of delivery is not obvious and easy to verify. It happens that both the National Council of the Judiciary and common courts do not treat deliveries seriously and do not respect all the consequences, which are the same as the consequences of deliveries made using a postal operator. Electronic deliveries are intended to facilitate and accelerate procedures conducted by the National Council of the Judiciary, but their use may involve irregularities that can only be verified by the Supreme Court.

KEYWORDS: *electronic delivery, National Council of the Judiciary, Supreme Court, resolution of the National Council of the Judiciary*

INTRODUCTION

The concept of creating a constitutional body that would protect the independence of courts and judges appeared in Poland in the second half of the 1980s and was constantly raised in discussions and legal hearings, until it finally became the subject of a creative debate during the Round Table meetings (Szewczyk, 2016; Roszak, 2007). Due to the April amendment (Act of April 7, 1989 on amending the Constitution of the Polish People's Republic, Journal of Laws of 1989, No. 19, item 101), the Constitution of the Polish People's Republic adopted by the legislative Sejm on July 22, 1952, included regulations regarding the National Council of the Judiciary (hereinafter also: Council, National Council of the Judiciary). Article 60 is replaced by the following: 1. Judges are appointed by the President, at the request of the National Council of the Judiciary. 2. Judges are irremovable, except in cases specified in law. 3. The powers, composition and manner of operation of the National Council of the Judiciary shall be specified by law. Then, the regulations regarding the National Council of the Judiciary were included in the currently applicable Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997, No. 78, item 483, as amended) in Art. 186, which constitutes in section 1 that the National Council of the Judiciary safeguards the independence of courts and judges, and in section 2 that the National Council of the

Judiciary may submit a request to the Constitutional Tribunal regarding the conformity of normative acts with the Constitution to the extent that they concern the independence of courts and judges.

COMPETENCES OF THE NATIONAL COUNCIL OF THE JUDICIARY

The competences of the National Council of the Judiciary are regulated in the Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2011, No. 126, item 714, as amended; hereinafter also referred to as NCJ). Pursuant to Art. 3 section 1 of the said Act, the competences of the Council include: considering and assessing candidates for the positions of Supreme Court judges and judges' positions in common courts, administrative courts and military courts, as well as the positions of judicial assessors in administrative courts; submitting to the President of the Republic of Poland applications for the appointment of judges in the Supreme Court, common courts, administrative courts and military courts and for the appointment of judicial assessors in administrative courts; submitting applications to the President of the Republic of Poland for the appointment of examined trainee judges and prosecutor trainees to the positions of judicial assessors in common courts; adopting a set of rules of professional ethics for judges and court assessors and ensuring their compliance; commenting on the condition of the judicial and assessor staff; expressing a position on matters relating to the judiciary, judges and judicial assessors, brought to its deliberations by the President of the Republic of Poland, other public authorities or judicial self-government bodies; giving opinions on draft normative acts relating to the judiciary, judges and assessors, as well as presenting proposals in this regard; giving opinions on judicial apprenticeship training programs, the scope and method of conducting judicial apprenticeship competitions and judge exams; giving opinions on annual training schedules regarding the training and professional development of judges, assessors and court employees.

Moreover, the Council, in accordance with Art. 3 section 2 of the Act on the NCJ performs other tasks specified in the acts, in particular: adopts

resolutions regarding applications to the Constitutional Tribunal to examine the compliance of normative acts with the Constitution of the Republic of Poland to the extent to which they concern the independence of courts and judges; considers applications to retire a judge; considers applications from retired judges to return to their judicial positions; expresses an opinion on the dismissal of the president or vice-president of the court; designates one member of the Program Council of the National School of Judiciary and Public Prosecution; expresses opinions on the appointment and dismissal of the Director of the National School of Judiciary and Public Prosecution; supervises the processing of personal data by the Constitutional Tribunal, the State Tribunal, the Supreme Court, the Supreme Administrative Court and courts of appeal, as part of the proceedings conducted by them.

APPLICATION FOR CANDIDACY IN THE COMPETITION FOR A JUDGE'S POSITION

Pursuant to Art. 57ab § 1 of the Act of July 27, 2001, Law on the Organization of Common Courts (Journal of Laws of 2001, No. 98, item 1070, as amended; hereinafter also: p.u.s.p.), candidacy for the vacant position of a district court judge and for the vacant position of a judge a district court is submitted to the president of the relevant district court, and a candidate for a vacant position of an appeals court judge is submitted to the president of the appeals court. Activities with respect to the candidate during the proceedings regarding the appointment to hold an office as a judge are carried out by the president of the competent court via the IT system (art. 57ab § 2 p.u.s.p.).

Pursuant to art. 57ac § 1 and § 2 p.u.s.p. if the application for a vacant judicial position does not meet the formal requirements (referred to in art. 57 § 6 and 7 and art. 57a § 1-5 and 7 p.u.s.p.), the president of the competent court calls on the candidate to complete it within seven days. If the application has not been completed within the prescribed period, the president of the competent court shall notify the applicant that the application has been left without consideration, via the IT system, stating the reason for leaving the application without consideration.

A person whose application has been left unconsidered may submit an objection via the IT system within seven days of notification (art. 57ac § 1 and § 3 p.u.s.p.). If the objection is not taken into account, the president of the competent court shall immediately forward it via the IT system together with the notification to the National Council of the Judiciary. The National Council of the Judiciary decides on whether to leave the application without consideration.

It should also be added that the delivery of letters between the president of the court and the participant of the competition proceedings is carried out in accordance with Art. 57ad § 2 p.u.s.p., which states that delivery is deemed effective when the candidate logs in to the IT system or after fourteen days from the date of placing the letter in the IT system.

PROCEEDINGS BEFORE THE NATIONAL COUNCIL OF THE JUDICIARY IN INDIVIDUAL CASES

Pursuant to the provisions of the NCJ Act, the National Council of the Judiciary adopts resolutions in individual cases after comprehensive consideration of the available case documentation and explanations of participants in the proceedings or other persons, if any were submitted (Article 33(1) of the NCJ Act). In individual cases regarding the appointment to the office of a judge of a common court, the Chairman requests the presentation of the candidate's personal files and other documents to the bodies and institutions covered by the IT system via this system. The candidate's personal files and documents requested by the Chairman may be presented via the IT system (Article 33(2a) of the NCJ Act). Pursuant to Art. 33 section 3 of the NCJ Act, explanations of the candidate for the position of a common court judge and supplementary materials may also be submitted via the IT system.

In the event that more than one candidate applies for a judicial position, such candidacy is first recognized by the Team of members of the National Council of the Judiciary, which then prepares a list of recommended candidates, taking into account the assessment of qualifications, taking into account professional experience, when determining their order. opinions of superiors, recommendations, publications and other documents attached

to the application form, as well as the opinion of the College of the competent court and the assessment of the relevant General Assembly of judges (Article 35 of the NCJ Act). Only after completing the above activities, the National Council of the Judiciary considers and evaluates all the submitted candidacies at a meeting, and then adopts a resolution including a decision on whether or not to submit an application for appointment to the office of judge in relation to all candidates (Article 37(1) the NCJ Act).

Pursuant to Art. 42 section 1 of the NCJ Act, Council resolutions in individual cases require justification, which is prepared within one month of their adoption (Article 42(2) of the NCJ Act). Pursuant to Art. 32 section 1a of the NCJ Act, delivery of the resolution is deemed effective when the candidate logs in to the IT system or after 14 days from the date of placing the letter in the IT system. The above-mentioned provision shall apply accordingly to individual cases considered by the Council regarding appointment to the office of a judge of the Supreme Court, provided that the capabilities of the IT system allow it (Article 32(1b) of the NCJ Act).

PROCEEDINGS BEFORE THE SUPREME COURT

Pursuant to Art. 44 section 1, first sentence of the NCJ Act, a participant in the proceedings may appeal to the Supreme Court due to the conflict of the Council's resolution with the law, unless separate provisions provide otherwise. Provided for in Art. 44 of the NCJ Act, the supervisory competence of the Supreme Court constitutes a form of exercising the constitutional right to a court other than the judicial administration of justice (Article 45 section 1 of the Constitution of the Republic of Poland). This jurisdiction is intended to protect the individual against the arbitrariness of the authorities (judgment of the Constitutional Tribunal of May 12, 2003, SK 38/02, point III.4.) by ensuring the final control of the legality of its actions (see the decision of the Supreme Court of November 9, 2020, I NO 82/20; decision of the Supreme Court of November 9, 2020, I NO 89/20) by the court (Demendecki, 2024).

In matters relating to resolutions on appointment to the office of a judge of a common court, the Supreme Court shall deliver documents in the

manner specified in Art. 32 section 1a (Article 44 section 3a of the NCJ Act). Pursuant to Art. 44 section 3 of the NCJ Act, the provisions of the Code of Civil Procedure on cassation appeals apply to proceedings before the Supreme Court in cases involving appeals against resolutions of the Council, apart from the provisions of Art. 871 of the Code of Civil Procedure establishing the obligation for lawyers to appear before this Court. The provisions on cassation appeals define the limits of the examination of the appeal by the Supreme Court (Ereciński, 2010), which are the limits of the appeal and the limits of the grounds for the complaint (Article 398¹³ § 1 of the Code of Civil Procedure). Moreover, the Supreme Court *ex officio* takes into account the invalidity of the proceedings (judgment of the Supreme Court of March 7, 2019, I NO 1/19). The jurisdiction of the Supreme Court in such a case is limited to examining the compliance of the contested resolution with the law (see judgment of the Supreme Court of August 5, 2011, III KRS 11/11; judgment of the Supreme Court of July 13, 2017, III KRS 17/17; judgment of the Supreme Court of January 10, 2019, I NO 49/18). This serves to respect the equal right of Polish citizens enjoying full public rights to access the public service on equal terms resulting from Art. 60 of the Constitution of the Republic of Poland (judgment of the Supreme Court of May 12, 2021, I NKRS 27/21; judgment of the Supreme Court of May 12, 2021, I NKRS 42/21).

If the deadline for submitting an appeal is missed, Art. 169 § 1-3 of the Code of Civil Procedure, according to which a letter requesting the reinstatement of the deadline must be submitted to the court where the action was to be performed within a week from the date the reason for missing the deadline ceases to exist. The letter should substantiate the circumstances justifying the application. Moreover, the party should take a procedural step simultaneously with the application. Only if all the conditions indicated above are met, pursuant to Art. 168 § 1 of the Code of Civil Procedure the court decided to restore the deadline (resolution of the Supreme Court of March 4, 2021, I NKRS 12/21).

THE IMPORTANCE OF USING THE IT SYSTEM IN INDIVIDUAL CASES

Considering and assessing candidates for the office of judge and then presenting applications for the appointment of judges to the President of the Republic of Poland are one of the most important competences of the National Council of the Judiciary (Nawrot, Vachev, 2020). In order to implement these competences, it is possible and sometimes necessary to use an IT system. In individual cases regarding the appointment to the office of a judge of a common court, documentation regarding the case, such as the candidate's personal file and the candidate's explanations, may also be submitted via the IT system and may be presented via the IT system (Article 33 section 2a of the NCJ Act; Article 33 section 3 of the NCJ Act), and letters, other documents, as well as resolutions of the Council adopted in individual cases regarding appointment to the office of a judge of a common court are delivered to candidates via the IT system (Article 32 section 1a the NCJ Act). In cases involving appeals against resolutions of the National Council of the Judiciary, the Supreme Court also delivers documents via the IT system (Article 44 section 3a of the NCJ Act).

Therefore, in individual cases regarding appointment to the office of a judge of a common court, the IT system is used by the National Council of the Judiciary to deliver letters, other documents and resolutions, and by the Supreme Court in cases of appeals against NCJ resolutions to deliver court decisions, such as orders and resolutions or judgments dispositive of the case.

Deliveries made via an IT system must therefore be treated on an equal footing with deliveries made via a postal operator, with all the consequences thereof. This issue is so important that it has found its way into the jurisprudence of the Supreme Court. An example illustrating the importance of deliveries made via the IT system in cases involving appeals against resolutions of the National Council of the Judiciary in individual cases may be the decision of the Supreme Court of March 4, 2021, I NKRS 12/21 and the judgment of the Supreme Court of November 15, 2023, I NKRS 101/22. It should be noted that both judgments mentioned above indicate that it happens that both the NCJ and common courts do not treat deliveries made via the IT system with due seriousness.

DECISION OF THE SUPREME COURT OF MARCH 4, 2021, FILE REFERENCE NUMBER I NKRS 12/21

The case in question was initiated by an appeal by a candidate taking part in the competition for the position of a district court judge in the District Court in T. against the resolution of the National Council of the Judiciary No. (...) /2020 of February 19, 2020 regarding the submission of an application for appointment to the office of position of a district court judge at the District Court in T., announced in Monitor Polski of 2019, item 415. On July 10, 2020, the candidate submitted an appeal to the Supreme Court through the National Council of the Judiciary along with a request to restore the deadline for filing an appeal against the above-mentioned. resolutions. Importantly, in this case, the President of the NCJ presented a document confirming the effective delivery of resolution No. (...) /2020 of February 19, 2020 to the Candidate only at the request of the Supreme Court, even though it explained the key issue enabling the issuance of a ruling in this case.

Application for reinstatement of the deadline for filing an appeal against the above-mentioned The candidate submitted the resolution pursuant to Art. 168 of the Code of Civil Procedure indicating that the failure to meet the deadline was not her fault, as she was notified of the adoption of the resolution and the negative consideration of her candidacy on March 10, 2020 via the e-nomination portal via e-mail. The e-mail did not include the content of the resolution or a message about the possibility of reading the resolution and making a note regarding its possible appeal. On June 4, 2020, the candidate received notification that the resolution had become final and asked the Chairman of the NCJ to explain the reason for the resolution becoming final despite its failure to be delivered. The President of the NCJ informed the candidate that the resolution was posted in the e-nomination system on March 20, 2020. In response, the applicant stated that she did not have access to the content of the resolution on her account on the portal and that she had not yet received a message about its attachment. Then, the Chairman of the NCJ, in a letter delivered to the Candidate on July 8, 2020, informed that the resolution was available on her account on the portal. After logging in, the candidate received access to the content of the resolution and its justification.

The President of the NCJ, in response to the Candidate's appeal, indicated that on March 10, 2020 at 8:13 a scan of the copy of the resolution was entered into the IT system, and at At 8:43, the e-mail address of the NCJ Office received information (automatically generated by the system) about the successful delivery of the resolution to the Candidate, which means that the complainant logged in to the system at that moment. The Chairman of the NCJ, at the request of the Court, presented a document confirming the effective delivery of resolution No. (...) /2020 of February 19, 2020 to the Complainant on March 10, 2020 at 08:43.

The Supreme Court found that the Candidate's request to restore the deadline for submitting an appeal should be considered unfounded because its basis – which was the Complainant's claim that she obtained access to the resolution in the IT system only in July 2020 – fails in the face of the document presented by the Chairman of the NCJ. confirming the effective delivery to the Candidate of resolution No. (...) /2020 of February 19, 2020, on March 10, 2020 at 08:43. The resolution was posted in the IT system and delivered on March 10, 2020, therefore, in accordance with Art. 44 section 2 of the NCJ Act, the deadline for filing an appeal expired on March 25, 2020, and on that day the resolution became final. Therefore, the appeal could not be considered on its merits.

As can be seen in the example of this case, the functioning of the IT system may give rise to problems and inaccuracies, therefore in cases where delivery is of key importance, it is necessary to submit a document that will indicate the date and effectiveness of delivery via this system.

JUDGMENT OF THE SUPREME COURT OF NOVEMBER 15, 2023, FILE REFERENCE NUMBER I NKRS 101/22

The case in question was initiated by the candidate's appeal of November 8, 2022 against the resolution of the National Council of the Judiciary No. (...) /2022 of October 12, 2022 regarding leaving the application for a vacant judicial position without consideration. The complainant alleged that the resolution was adopted in violation of the provisions of procedure to the extent that had a significant impact on the outcome of the case, namely Art. 33 section 1 of the NCJ Act in connection with Art. 57ac § 2 and 3 p.u.s.p. by considering it justified to leave

the application without consideration due to its failure to complete it within the prescribed deadline, while the seven-day deadline for correcting the deficiencies in the application had not yet expired when the President of the District Court in Ł. decided to leave the application without consideration.

In the justification for the contested resolution, it was stated that on July 13, 2021, the Complainant was requested to correct the deficiencies in the notification within 7 days by documenting the practice of the profession of a legal advisor for at least three years, submitting information about the professional examination, and submitting valid certificates stating that he is capable of due to his health condition, to perform the duties of a judge and limiting the list of cases to 50. On July 23, 2021 at 12:15 The complainant successfully logged in to the e-nominations IT system and received a request to complete the formal requirements. Then, on the same day at 12:29 completed the *complete the requirements* task. However, while performing the task, the participant did not add any document to the system. Therefore, he did not correct the deficiencies in the report. Therefore, the Council found that the President of the District Court in Ł. was justified in leaving the application of the participant in the proceedings without consideration.

As indicated by the Supreme Court, in accordance with Art. 57ac § 1 and § 2 p.u.s.p. if the application for a vacant judicial position does not meet the formal requirements referred to in Art. 57 § 6 and 7 and art. 57a § 1-5 and 7 p.u.s.p., the president of the competent court calls on the candidate to complete it within seven days. If the application has not been completed within the prescribed period, the president of the competent court shall notify the applicant that the application has been left without consideration, via the IT system, stating the reason for leaving the application without consideration. In turn, according to art. 57ad § 2 p.u.s.p. delivery is deemed effective when the candidate logs in to the IT system or after fourteen days from the date of placing the letter in the IT system. The regulations therefore clearly define the deadline for correcting formal deficiencies, and most importantly, they specify the moment from which the deadline should be counted.

As determined by the Supreme Court, the Complainant successfully logged in to the IT system and received a request to complete the formal requirements on July 23, 2021, and therefore the 7-day deadline for completing the formal deficiencies expired on July 30, 2021. However, by letter of July 23, 2021 ,

placed in the e-nominations system on July 27, 2021, the President of the District Court in Ł. informed the participant of the proceedings that, pursuant to Art. 57ac § 2 p.u.s.p. his application without consideration due to failure to correct the deficiencies in the application within the statutory deadline.

The above means that informing the Complainant about leaving pursuant to Art. 57ac § 2 p.u.s.p. its notification without recognition due to failure to correct the deficiencies in the notification within the statutory deadline occurred before the expiry of this statutory deadline. It is therefore obvious that the order to leave the application without consideration was issued in violation of Art. 57ac § 2 p.u.s.p.

As the Supreme Court emphasized, despite this prima facie apparent irregularity, both the team of NCJ members and the Council itself took the position in the Resolution that since the Complainant did not correct the deficiencies in the notification within the statutory deadline, the application should have been left without consideration. It should be emphasized that the justification did not indicate that the NCJ took into account the running of the 7-day deadline for rectifying formal deficiencies or referred to it in any way.

The Supreme Court found that the contested resolution was issued without comprehensive consideration of the matter, in violation of Art. 33 of the NCJ Act in a way that affects the outcome of the case. As a consequence, the allegation of violation of Art. 57ac § 2 and 3 p.u.s.p. by considering it justified to leave the application without consideration due to failure to correct the missing information within the statutory deadline.

It should be emphasized that on July 13, 2021, the Complainant was requested to correct the missing information within 7 days. On July 23, 2021 at 12:15 The complainant successfully logged in to the e-nominations IT system and received a request to complete the formal requirements. Then, on the same day at 12:29 completed the *complete the requirements* task, but did not add any document to the system. He did not correct the deficiencies in the notification, but the deadline for this supplement had not yet expired, so the issuance of an order to leave the application of the participant in the proceedings without consideration already on July 23, 2021, i.e. on the day when the Complainant only logged into the system and performed the task *supplementing the requirements* without attaching the requested documents could not be considered justified.

THE IMPORTANCE OF DELIVERIES MADE VIA THE IT SYSTEM

The above examples of cases in which delivery via the IT system were of key importance for the resolution of the case by the Supreme Court show that it still happens that these deliveries are not treated with due seriousness regarding their legal effects. Decision of the Supreme Court of March 4, 2021, I NKRS 12/21 concerned a case in which the positions of the Chairman of the NCJ and the Complainant clashed regarding the deadline for delivering the resolution to the Complainant in the IT system, and the resolution of the case was determined by the document submitted to the Supreme Court confirming the effective delivery of the resolution to the Complainant. However, the judgment of the Supreme Court of November 15, 2023, I NKRS 101/22 presents the issue of treating the date of placing a document in the form of a request to correct formal deficiencies in the IT system as the date of its delivery, and, consequently, incorrect calculation of the deadline for correcting formal deficiencies and issuing an unlawful judgment.

CONCLUSION

The issue of electronic delivery in cases of appeals against resolutions of the National Council of the Judiciary is sometimes of key importance for the resolution of cases by the Supreme Court. It might seem that the issue of deliveries is obvious and easy to verify, but in the case of deliveries made via the IT system, it turns out to be not obvious. This is because it happens that both the National Council of the Judiciary and common courts do not treat the deliveries in question with the seriousness they deserve and with all the consequences, which are the same as those relating to deliveries made via a postal operator. Electronic delivery is intended to facilitate and speed up proceedings before the National Council of the Judiciary, but their use may involve irregularities that can only be verified by the Supreme Court.

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