

Poland, Constitutional Court, P 16/19, 10 December 2019

Member State

 Poland

Topic

Rule of law, access to justice, terms for lodging the complaint

Deciding Court Original Language

National Court

Trybuna? Konstytucyjny

Deciding Court English translation

Constitutional Court

Registration N

P 16/19

Date Decision

December 10th, 2019;

ECLI (if available)

Not available

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence

Only the national legal sources

Subject Matter

Access to justice – Right to an effective remedy before a tribunal – challenging final judicial decisions

Legal issue(s)

Rule of law – fair trial – capacity to lodge a complaint – time limits in civil procedure

Request for expedited/PPU procedures

NO

National Law Sources

Constitution;

Code of Civil Procedure;

Facts of the case

The applicant reconstructed the content of the constitutional right to a court on the basis of the selected case law of the Constitutional Tribunal and discussed the nature of the term indicated in Article 407 of the Civil Procedure Code. It stated, inter alia, that 'the three-month period for lodging a complaint provided for in Article 407 of the Code of Civil Procedure determines the temporary admissibility of a request to resume proceedings, based on the connection between the cause of resumption and the awareness of its existence'. It is an a quo, procedural, reversible and relative period. According to the applicant, it serves only 'indirectly' to protect the validity of the judgment and its fundamental objective is 'to mobilise the individual to assert his rights quickly'.

The reason for lodging the complaint was infringement of Article 45(1) of the Constitution with regard to 'the appropriate shaping by the legislature of the judicial procedure in cases involving the resumption of civil proceedings so that it meets the requirements of fairness, procedural fairness and the precise, clear and legible determination of the rights of the parties and the possibility of challenging final judicial decisions in the form of a complaint for the resumption of proceedings, and that it is free from disproportionate formal rigour, excessively limiting access to justice and the protection of the rights of the applicant in those proceedings'.

The Constitutional Tribunal held that Article 407(1) of the Code of Civil Procedure, in so far as it provides that an application for resumption of civil proceedings due to basing the judgment on a forged or forged document is filed within three months from the day on which a party learnt about the basis for the resumption, is consistent with Article 45(1) in conjunction with Article 31(3) of the Constitution.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Constitutional court affirms that the time limit is not too short in view of the time needed to carry out the preparatory steps for the application for renewal. The application for reopening is, in a sense, a continuation of an earlier procedure, and it is therefore possible to use previous pleadings to formulate it.

However, their loss or destruction (and the need to reconstitute them) is not significant, since in this type of pleading the applicant argues first and foremost with the factual findings made by the court on the basis of a document that has been forged or forged in a single final judgment. If the applicant is not in possession of that judgment, he is able to obtain a copy of it before the expiry of the time limit specified in Article 407(1) of the Code of Civil Procedure by exercising due diligence. Obtaining access to the original of a doubtful document (if it is not in the file of the resumed case) is also possible in the course of proceedings and does not condition the effectiveness of filing a complaint for resumption.

In the current reality, the length of this period is also sufficient in case of need or necessity to use professional legal assistance, both commercial and ex officio (cf. Article 124 of the Civil Code).

Comparative approach:

In addition, it should be noted that the term under consideration does not deviate significantly from the solutions envisaged in other European countries. In the light of the information provided by the Sejm in this case, the time limits for lodging complaints for the resumption of civil proceedings (or pleadings with a similar function) range from four weeks (Austria), thirty days (Croatia), one month (Germany) for two months (France), ninety days (Switzerland) and three months (Spain, the Czech Republic, Slovakia), and very rarely reach as much as six months from the date on which the basis for the resumption of civil proceedings was found out (Belgium).

Use of Judicial Interaction technique(s)

Only internal dialogue, the court quotes his jurisprudence (and Supreme Court) only, without broader view. There is a bit of comparative reasoning with foreign legislation – the comparison of time limits implemented in other European countries. However the analysis it is based on the statement of Speaker of Parliament only, not on evidence done by the tribunal.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

As above.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Not applicable

Strategic use of judicial interaction technique (purpose aimed by the national court)

The main idea was to show national “juridical tools” to solve the problem, which could be (in my opinion) also solved (or at least examined) using EU Charter art. 47 – template #4

Impact on Legislation / Policy

Not applicable

(Link to) full text

<https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=18700&sprawa=21458>

Author

Jarosław Gwizdak INPRIS

History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Judgment of Constitutional Court.
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