

JURISDICTIONAL STATUS OF THE POLISH RECHTSPFLEGER¹

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Abstract: *The purpose of the paper is to introduce the office of the Rechtspfleger in Poland.*

The office of the Rechtspfleger is a relatively new institution in the Polish judiciary, whilst in other European countries it has a longer tradition. It was first established in Austria and Germany, and subsequently in: Belgium, Denmark, Finland, France, Hungary, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden. The office is also known in such non-European countries as Morocco, Tunisia or even Japan.

There is no complex normative regulation concerning the office of the Rechtspfleger. Regulations regarding the Rechtspfleger's occupational status are included in the Common Courts Organization Act, whilst the Rechtspfleger's powers are defined mostly in the Code of Civil Procedure and in some other acts such as: the Civil Court Fees Act, the Land and Mortgage Registers and Mortgage Act and others.

The paper mainly concerns the jurisdictional status of the office. In consequence, the following remarks deal with the Rechtspfleger's powers in litigious proceedings, non-litigious proceedings (including land and mortgage proceedings, register proceedings, inheritance proceedings and compensatory proceedings), enforcement proceedings and international proceedings, as well as with means of appeal against the Rechtspfleger's judgments (the complaint on actions of the Rechtspfleger).

Keywords: *office of the Rechtspfleger, Polish judiciary, normative regulation, Code of Civil Procedure, the jurisdictional status.*

Introduction

Under the act amending the Law on Common Courts Organization Act, the Code of Civil Procedure, the Land and Mortgage Registers and Mortgage Act and the Prosecution Act, of 21 August 1997², a new institution in the Polish judiciary, i.e. the Rechtspfleger, was established.

Rechtspfleger are independent, autonomous in relation to the essence of issued judgments and regulations, organs of judicature, assigned with legal tasks and granted

¹ The German term “Rechtspfleger” is used as an equivalent for the Polish term “referendarz sądowy” as it is officially applied in English translations, where it relates to officials with certain judicial powers (e.g. European Union of Rechtspfleger). The term perfectly reflects the nature of the office as the office itself originated in German-speaking countries, such as Austria and Germany.

² The act amending the Law on Common Courts Organization Act, the Code of Civil Procedure, the Land and Mortgage Registers and Mortgage Act and the Prosecution Act, of 21 August 1997 (Journal of Law of 1995, No. 117, item 752).

specific powers determined by legal provisions, within which they have been given judicial authority.

The main reasons for establishing the office of the *Rechtspfleger* included postulates of doctrine and judicial practice as well as the Recommendation of the Minister Committee to the Member States about certain measures for the accomplishment and reduction of the excess of work, passed by the Minister Committee on 16 September 1986 in the 399. Conference of the Representatives of the Ministers³. According to the above-mentioned recommendations, measures such as: reduction of the non-judicial tasks entrusted to judges by assigning such tasks to other persons or bodies, and providing for bodies which, outside the judicial system, shall be at the disposal of the parties to solve disputes on small claims and in some specific areas of law, could be taken into consideration. The increasing number of cases brought before the courts and excessive workload of judges are among the reasons for protraction of proceedings⁴ which interferes with free access to administration of justice, especially with everyone's right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, under Article 6 para.1 of the European Convention on Human Rights⁵, as well as under Article 47 para.2 of the Chapter of Fundamental Rights of the European Union⁶. Following the recommendations, the office of the *Rechtspfleger* was established in Austria and Germany, where it originated, and subsequently in other European countries such as: Belgium, Denmark, Finland, France, Hungary, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, which followed the example of Austria and Germany. The office is also known in such non-European countries as Morocco, Tunisia or even Japan⁷.

Domestic associations of *Rechtspfleger* established an international union of *Rechtspfleger* – European Union of *Rechtspfleger* (E.U.R.⁸). The official foundation of the E.U.R. was during the *Deutschen Rechtspflegertag* on 6 October 1967 in Karlsruhe. E.U.R. participates to a great degree in implementation of administration of justice reforms, application of international law, and in assurance of respect for human rights and

³ Recommendation No. R (86) 12 Measures to prevent and reduce the excessive workload in the courts, Strasburg 1987.

⁴ A. Góra – Błaszczkowska suggests that duration of proceedings is strongly associated with the principle of equality, as prolonged proceedings is more expensive and more liable to cause higher costs than those beard in proceedings without undue delay. Protraction of proceedings often follows from the abuse of subjective rights by the parties, which violates the principle of equality. *Zasada równości stron w procesie cywilnym*, Warszawa 2008, p. 382.

⁵ European Convention on Human Rights and Fundamental Freedoms, ratified by Poland on 19 January 1993 (JL of 1993r., No. 61, item 284).

⁶ Chapter of Fundamental Rights of the European Union drafted by the European Convention, called in 1999 by the Cologne European Council to consolidate rights for EU citizens and enshrine them at EU level, and solemnly proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission.

⁷ Y. Tamaguchi, *Jurist and paraprofessionals* (in:) *Towards a Justice with a Human Face. The first Internarional Congress on the Law of Civil Procedure, Faculty of Law – State Univ of Ghent 27.08.1977 – 4.09.1977*. EDS M. Storme and H. Casman, Deventer/ Antwerpen. Kluwer 1978, p. 497.

⁸ The abbreviation E.U.R. derives from the German name of the union - Europäische Union des Rechtspfleger.

freedoms.⁹ The main objectives of the E.U.R. include in particular: participation in creating, development and harmonizing of law on a European and international level, representation and acceptance of ideological and material interests of the members of the E.U.R. in respect of European and international level, realization of issues of its members in confrontation with national governments, maintenance of cultural and collegial relations beyond the boundaries of individual countries and the support and promotion of integration of European friendship of peoples, support of administration of justice by exchanging information, by creating studies together and by founding partnerships. The European Union of Rechtspfleger assembles Rechtspfleger from numerous European countries such as: Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Italy, Luxembourg, Norway, Poland, Portugal, Romania, Spain, Sweden, the Netherlands.¹⁰

There is no complex normative regulation concerning the office of the Rechtspfleger. Regulations regarding the Rechtspfleger's occupational status are included in the Common Courts Organization Act¹¹, whilst the Rechtspfleger's powers are defined mostly in the Code of Civil Procedure¹² and in some other acts such as: the Civil Court Fees Act¹³, the Land and Mortgage Registers and Mortgage Act¹⁴ and others.

Due to limited possibilities offered by the form of an article, the following remarks mainly concern the jurisdictional status of the office, whilst the analysis of the Rechtspfleger's occupational status is not presented. In consequence, the subsequent considerations deal with the Rechtspfleger's powers in litigious proceedings, non-litigious proceedings (including land and mortgage proceedings, register proceedings, inheritance proceedings and compensatory proceedings), enforcement proceedings and international proceedings, as well as with means of appeal against the Rechtspfleger's judgments.

1. The Rechtspfleger's powers in the litigious proceedings

The Rechtspfleger's powers in the litigious proceedings have been precisely defined by the legislator. The majority of actions performed by the Rechtspfleger in the litigious proceedings are however of incidental nature and can be found in the form of decisions and regulations.

The act of 22 December 2004¹⁵ amended the Code of Civil Procedure by means of providing the Rechtspfleger with the power to issue an order of payment in the proceedings by reminder of payment (Article 353¹ § 2). The main purpose of the aforementioned amendment was to relieve the judges of issuing orders of payment in proceedings where the scope of the court's cognition is limited to verifying whether

⁹ Guy de Vel, *Preface to Comparative Study about the Legal Statute and Duties of Rechtspfleger and Greffiers in Europe* za M. Rękawek – Pachwicewicz, *Status prawny referendarza sądowego w Polsce i wybranych państwach Unii Europejskiej* (in:) *Wymiar sprawiedliwości Unii Europejskiej*, red. M. Perkowski, Warszawa 2003, p. 291.

¹⁰ Detailed list of members can be found on the official website of the E.U.R. - www.rechtspfleger.org.

¹¹ The Common Courts Organization Act of 27 July 2001 (JL of 2001, No. 98, item 1070 ze zm.).

¹² The Code of Civil Procedure Act of 17 November 1964 (JL of 1964, No. 43, item 296 z późn. zm.).

¹³ The Civil Court Fees Act of 28 July 2005 (JL of 2005, No. 167, item 1398).

¹⁴ The Land and Mortgage Registers and Mortgage Act of 16 July 1982 (JL of 1982, No. 124, item 1361).

¹⁵ The act amending the Code of Civil Procedure and the Law on Common Courts Organization Act of 22 December 2004 (JL of 2005, No. 13, item 98).

circumstances defined under Article 499 of the Code of Civil Procedure (C.C.P.) occur, without investigating the factual basis of judgment.

Since 12 December 2008 the Rechtspfleger has been entitled to issue European order of payment in proceedings concerning trans-border matters.

Since 1 January 2010 a new electronic proceedings by reminder of payment¹⁶ has been introduced into the Polish civil procedure law and the Rechtspfleger has been granted powers concerning numerous actions in this proceedings, including issuing an order of payment (Articles 353¹ § 2 i art. 505³⁰ C.C.P.).

Order of payment decides a substance of a case and thus can be considered as a substantive judgment. It is a unilateral decision which always decides a matter on its merits.¹⁷ The Rechtspfleger cannot issue orders of payment to dismiss a claim.¹⁸ Order of payment is always issued during a closed session. It is a conditional judgment as an appeal against it does not result in deciding a case by a superior court.¹⁹ The Rechtspfleger issues an order of payment when a plaintiff pursues a financial claim, or, in other cases – if a special regulation stipulates so. It is not necessary to make a motion for issuing an order of payment in the proceedings by reminder of payment. If there are no grounds for issuing an order of payment, the presiding judge assigns a trial and a case is considered in a proper type of proceedings (ordinary or special proceedings) unless a case can be tried at a closed session (Article 498 § 2 C.C.P.).

The proceedings by reminder of payment and the European proceedings by writ of payment are within the competence of regional and district courts (Article 497¹ § 1 and Article 505¹⁶ § 1 C.C.P.), whilst cases in the electronic proceedings by reminder of payment are decided only by a regional court, called the e-court (Article 17 pkt. 4 C.C.P.). The orders of payment are governed by regulations concerning sentences, as both types of judgments have some similarities and can be regulated by the same provisions, though they are applied respectively (Article 353² C.C.P.).²⁰

The Rechtspfleger can declare legal validity of decisions (art. 364 § 2 C.C.P.). They can also participate in the acts of taking evidence, performed remotely with the use of appropriate technical devices. However, the Rechtspfleger's participation in the remote evidence acts is limited to technical and organizational actions (e.g. verifying personal details of the interrogated person, securing proper conditions for performance of the evidence act)²¹, whilst the act itself is performed by a particular court deciding a case (Article 235 § 2 C.C.P.).

General rule in the Polish civil proceedings stipulates that judgments are issued mainly in the form of decisions, whilst sentences are issued only exceptionally. Judgments issued by the Rechtspfleger in litigious, non-litigious and enforcement proceedings are also mainly decisions. Among a large number of various decisions issued by the Rechtspfleger,

¹⁶ The act amending the Code of Civil Procedure and other legal acts of 9 January 2009 (JL of U. No. 26, item 156).

¹⁷ M. Jędrzejewska (in:) T. Ereciński, J. Gudowski, M. Jędrzejewska, *Komentarz do kodeksu postępowania cywilnego. Część I. Postępowanie rozpoznawcze*. Warszawa 2001, p. 652.

¹⁸ S. Cieślak, *Formalizm postępowania cywilnego*, Warszawa 2008, p. 252.

¹⁹ M. Manowska, *Postępowania odrębne w procesie cywilnym*, Warszawa 2003, p. 168; S. Dalka, *Ochrona sądowa roszczeń majątkowych w postępowaniu nakazowym i upominawczym*, Gdańsk 1977, p. 207 and next.

²⁰ J. Nowacki, „Odpowiednie” stosowanie przepisów prawa, PiP 1964, No. 3, p. 367.

²¹ G. Kopczyński, *Przesłuchanie świadka na odległość w polskim procesie karnym*, AUWr, Przegląd Prawa i Administracji 2005, t. 72, p. 225.

which are impossible to be specified in this article in an exhaustive manner, the following decisions should be distinguished: decisions on the substance of the case, decisions finalizing the proceedings, certain decisions specified in Article 394 § 1 C.C.P., decisions appending the enforcement clause, decisions declaring the enforceability of the European order of payment, decisions concerning issuing a certificate on judgments issued in European small claims procedure. However, decisions on the substance of the case and decisions finalizing the proceedings are issued only in non-litigious proceedings.

In the litigious proceedings the Rechtspfleger has powers to issue various regulations such as (e.g.):

- regulations summoning a party to supplement or to correct formal shortages of procedural writs, including shortages of special writs submitted on official forms,
- regulations summoning a party to pay due court fees,
- regulations concerning return of a writ after ineffective lapse of time set to supplement or to correct formal shortages or to pay due court fees,
- regulations summoning a party to pay or to supplement court fees due to determining higher value of the subject of litigation, withdrawal of the release from court fees or discharging of guardianship and to pay advance to cover expenditures,
- all regulations in the proceedings by reminder of payment (Article 497¹ § 3 C.C.P.),
- regulations in the European proceedings concerning trans-border matters (Articles 505¹⁶ § 3 and 505²² § 2 C.C.P.)
- performing actions, including issuing regulations, in the electronic proceedings by reminder of payment (Article 505³⁰ C.C.P.),
- regulation concerning proper investigation of the actual financial status of a party released from court fees or submitting for the release (Article 109 § 1 of the Civil Court Fees Act),
- regulation concerning return of a motion based on Article 19 para. 3 of the National Court Register Act²²,
- regulation concerning return of fees and advances mentioned in the Articles 82 and 84 of the Civil Court Fees Act,
- regulation concerning deferral of the court dues or spreading the dues into installments (Article 125 of the Civil Court Fees Act),
- regulation concerning appointment of a guardian for a person whose residence is unknown.

2. The Rechtspfleger's powers in the non-litigious proceedings

The range of the Rechtspfleger's *ratione materiae* competence in the non-litigious proceedings is defined under the Article 509¹ C.C.P. and Article 8 para.1 of the State Compensation for Victims of Some Offences Act²³ which stipulate that actions in proceedings concerning the entry in the land and mortgage registers, register proceedings, inheritance proceedings and compensatory proceedings can be performed by the Rechtspfleger. The Rechtspfleger's powers in the non-litigious proceedings are also specified in other legal acts, mentioned below. The Rechtspfleger in the non-litigious proceedings are entitled to issue: regulations summoning participants of the proceedings to

²² The National Court Register Act of 20 August 1997 (JL of 2001r., No. 17, item 209).

²³ The State Compensation for Victims of Some Offences Act of 7 July 2005 (JL of 2005, No. 169, item 1415).

supplement formal shortages accordingly with Articles 130⁵ and 13 § 2 C.C.P., regulations and instructions concerning court fees, assigning legal aid, regulations declaring legal validity of decisions, and regulations concerning appointment of a guardian for a person whose residence is unknown. Within the granted powers the Rechtspfleger has been given judicial authority (Article 47¹ C.C.P.).

2.1. The Rechtspfleger's powers in the land ad mortgage proceedings

The land and mortgage proceedings is governed by the regulations included in the C.C.P., i.e. Articles 626¹ – 626¹³, supplemented with provisions of the following legal acts: the Land and Mortgage Registers and Mortgage Act (Articles 23 - 58²), the Transferring the Content of the Current Land and Mortgage Registers into the Computerized Structures of the Land and Mortgages Registers Act of 14 February 2003²⁴, and the following ordinances: the ordinance on the ways of transferring the content of the current land and mortgage registers into computerized structures of the land and mortgages registers of 20 August 2003²⁵, the ordinance concerning detailed organization and functioning of the migratory center as well the tasks carried out by the center and the regional courts during the process of the land and mortgage registers migration of 18 August 2003²⁶, the ordinance concerning establishing and keeping registers in a computer-based system of 20 August 2003²⁷, the ordinance concerning keeping the land and mortgage registers and collection of documents of 17 September 2001²⁸, the ordinance on the rules of internal procedure of the common courts of 23 February 2007²⁹ (section 3, chapter 8 – special provisions concerning land and mortgage matters).

Under the Article 509¹ § 1 C.C.P., the Rechtspfleger has the power to perform actions in proceedings concerning the entry in the land and mortgage registers, and under the Article 23 of the land and mortgages registers Act, the Rechtspfleger is entitled to perform actions relating to keeping the record. In other words, the above regulations give the Rechtspfleger the ability to perform all the actions, normally carried out by a court in the process of keeping the land and mortgages register. In consequence, the Rechtspfleger has been given the authority to: perform acts of taking evidence in the proceedings, issue various regulations and judgments, including judgments concerning making or removing the entries in the land and mortgage registers, make reasons for the judgments and to make proper notifications.³⁰

²⁴ The Transferring the Content of the Current Land and Mortgage Registers into the Computerized Structures of the Land and Mortgages Registers Act of 14 February 2003 (JL of 2003, No. 42, item 363).

²⁵ The ordinance on the ways of transferring the content of the current land and mortgage registers into computerized structures of the land and mortgages registers of 20 August 2003 (JL of 2003, No. 162, item 1574).

²⁶ The ordinance concerning detailed organization and functioning of the migratory center as well the tasks carried out by the center and the regional courts during the process of the land and mortgage registers migration of 18 August 2003 (JL of 2003, No. 162, item 1573).

²⁷ The ordinance concerning establishing and keeping registers in a computer-based system of 20 August 2003 (JL of 2003, No. 162, item 1575).

²⁸ The ordinance concerning keeping the land and mortgage registers and collection of documents of 17 September 2001 (JL of 2001, No. 102, item 1122).

²⁹ The ordinance on the rules of internal procedure of the common courts of 23 February 2007 (JL of 2007 No. 38, item 49).

³⁰ J. Gudowski (in:) T. Ereciński, J. Gudowski, M. Jędrzejewska, *Kodeks.....t. 3*, p. 26.

Detailed powers granted to the Rechtspfleger are defined in the Transferring the Content of the Current Land and Mortgage Registers into the Computerized Structures of the Land and Mortgages Registers Act³¹. Under the aforementioned act, the Rechtspfleger has been given the following powers:

- determining the content of the land and mortgage register subject to migration and, if doubts arise, the ways of transferring the content into computerized structures of the land and mortgages registers (Article 11),
- undertaking the clarifying measures, aimed at defining the content of the land and mortgage register due to transfer in case the content of the register appears to be illegible. When these measures are completed, the Rechtspfleger indicates the way of inserting the decoded content of the register into the computerized structure of the land and mortgage register (Article 12),
- approving the correctness of transferring the content of the land and mortgage register into the computerized structure of the land and mortgage register (Article 14),
- correcting - *ex officio* or on request of the interested party – the errors made during the migrations process; the correction is done in the course of the non-litigious proceedings (Article 18),
- keeping substantive supervision over the migration process of the land and mortgage registers and consulting the migration center employees, if officially delegated to the migration center (Article 21).

2.2. The Rechtspfleger's powers in the register proceedings

The doctrine refers to the register proceedings in two ways, i.e. in a strict and in a broad sense. The register proceedings *sensu stricto* is considered to include only matters concerning entries in the National Court Register, whilst in a broad sense, the proceedings comprises also matters concerning entries in other court registers, both subjective and objective.³² The subjective registers include registers of the retirement funds (Articles 16 – 21 of the Organization and Functioning of the Retirement Funds Act of 28 August 1997³³) and of the investment funds (Article 15 para.6 of the Investment Funds Act of 27 May 2004³⁴), whereas the registers of newspapers and magazines (Article 20 of the Press Law Act of 26 January 1984³⁵) and the register of pledges (Article 36 of the Pledge by

³¹ See: A. Stefańska, *Elektroniczna księga wieczysta*, Warszawa 2006, p. 15; J. Biernat, *Piśmiennictwo: Praktyczne wyjaśnienia oraz wzory umów i pism*, Warszawa 2006, p. 10 and next B. Gruszczyński, *Doświadczenia Saksonii w zakresie tworzenia skomputeryzowanego Rejestru Ksiąg Wieczystych*, Rej. 1998/6, p. 23 and next; J. Gołaczyński, Kotecka S., *Elektroniczne postępowanie wieczystoksięgowie w Polsce na tle rozwiązań niemieckich*, *Na wokandzie* No. 2/2011, p. 15 and next; G. Kołodziejska, W. Kapusta, D. Bogucki, *Informatyczna księga wieczysta – omówienie wstępnych założeń systemowych (Warsztaty – Popowo w dniach 20-21 grudnia 1997r.)*, Rej. 1998/6, p. 49 and next

³² A. Jakubecki (in:) L. Ciulkin, A. Jakubecki, N. Kowal, *Krajowy Rejestr Sądowy i postępowanie rejestrowe. Praktyczny komentarz*. Warszawa 2002, p. 200.

³³ The Organization and Functioning of the Retirement Funds Act of 28 August 1997 (JL of 2004r., No. 159, item 1667).

³⁴ The Investment Funds Act of 27 May 2004 (JL of 2004, No. 146, item 1546).

³⁵ The Press Law Act of 26 January 1984 (JL of U. No. 5, item 24 z późn. zm.).

Registration and Register of Pledges Act of 6 December 1996³⁶) are classified as the objective registers.³⁷

The register proceedings is governed by the regulations included in the C.C.P. (Articles 694¹ – 694⁹), the National Court Register Act, and other legal acts (e.g. the Foundations Act of 6 April 1984³⁸, the Associations Act of 7 April 1989³⁹) that refer to particular entities subject to registration as well as provisions of the ordinance on the rules of internal procedure of the common courts of 23 February 23⁴⁰ (section 2 – register matters).

Under the Article 509¹ § 2 C.C.P., the *Rechtspfleger* has the power to perform actions in the register proceedings, with the exception of holding court (Article 509¹ § 2 C.C.P.), which actually does not deprive them of the power to assign a proceedings in open court other than the trial.

The *Rechtspfleger* acts in the register proceedings include in particular⁴¹:

- performing actions concerning the register of pledges in the regional courts – economic divisions of the register of pledges,
- performing actions concerning the National Court Register in the regional courts – economic divisions of the National Court Register,
- performing actions concerning the newspapers and magazines register in the district courts – civil divisions,
- performing actions concerning the retirement funds register in the District Court in Warsaw - VII and XXVI Civil Registry Division,
- performing actions concerning the investment funds register in the District Court in Warsaw - VII and XXVI Civil Registry Division,
- performing actions concerning the record of the political parties in the District Court in Warsaw – VII and XXVI Civil Registry Division.

The *Rechtspfleger* has the power to perform acts of procedural nature, e.g. issuing decisions on assigning an expert, granting expert's fee or approving expert's expenditures calculation. Some of the authors⁴² recognize the *Rechtspfleger*'s power to appoint a guardian, in cases where a legal person, registered in the register of entrepreneurs, is not discharging the duties prescribed by law. The guardian can be assigned for a maximum time of one year, though the term of office can be extended for the next 6 months (Article 26 para.1 of the National Court Register Act). Since the *Rechtspfleger* has the power to assign a guardian, they are also entitled to discharge them, either on request of a legal person - when the *Rechtspfleger* verifies if the legal person performs the duties prescribed by law, or *ex officio* - when fulfilling the guardian's duties is taken into account (Article 31 of the National Court Register Act). The *Rechtspfleger* can also decline to assign a guardian.

³⁶ The Pledge by Registration and Register of Pledges Act of 6 December 1996 (JL of 1996, No. 149, item 703).

³⁷ Apart from the aforementioned registers, the record of political parties kept by the District Court in Warsaw is also considered as a *sui generis* court register.

³⁸ The Foundations Act of 6 April 1984 (JL of 1984, No. 21, item 97).

³⁹ The Associations Act of 7 April 1989 (JL of 1989, No. 20, item 104).

⁴⁰ The ordinance of the Ministry of Justice on the rules of internal procedure of the common courts of 23 February 23 (JL of 1989, No. 38, item 249).

⁴¹ T. Niemiec, *Nowy zakres czynności referendarzy sądowych*, *Gazeta Sądowa* 7-8/2005, p. 30.

⁴² T. Niemiec, *Nowy.....*, p. 31.

A guardian can also be assigned under the circumstances described in the Article 42 C.C.P. , i.e. for a legal person that cannot manage their affairs due to the lack of organs. The subject responsible for assigning the guardian is the registry court (Article 603 C.C.P.). After assigning the guardian, they appoint the board, which is necessary to initiate the coercitif proceedings under the Article 24 of the National Court Register Act.⁴³ Under the Article 27 of the National Court Register Act, the above-mentioned acts of the registry court (assigning a guardian, discharging a guardian, declining to assign a guardian) can be appealed against. However, there is no legal provision stipulating the possibility of lodging a special complaint against the Rechtspfleger's acts performed in the course of procedure stipulated under the Articles 42 C.C.P. and 603 C.C.P. Since the legislator did not introduce any form of a judicial review in such cases, it can be concluded that the Rechtspfleger has no power to assign a guardian under the circumstances described in the Article 42 C.C.P. No party cannot be deprived of the possibility to control the Rechtspfleger's acts in cases where similar court acts are subject to instance control.

2.3. The Rechtspfleger's powers in the inheritance proceedings

The provisions of the act amending the Notarial Services Law Act and some other legal acts of 24 August 2007⁴⁴ introduced a number of legislative changes which extended the Rechtspfleger's powers in non-litigious proceedings, especially in the inheritance proceedings. Under the Article 509¹ § 3 C.C.P., the Rechtspfleger gained the power to perform all acts in the inheritance proceedings, with the exception of:

- holding court, i.e. in cases concerning ascertainment of the acquisition of an inheritance, inheritance division, disclosure of item of the inheritance, approval of the evasion of legal consequences of the acceptance or rejection of the inheritance,
- securing of the inheritance,
- hearing witnesses of the oral testament.

In consequence, the Rechtspfleger has the power to perform the following acts in the inheritance proceedings:

- decision on preparing the inventory (both: *ex officio* and on request)
- admission of the acceptance or rejection of the inheritance; declaration of acceptance or rejection of the inheritance can be submitted orally or in writing with a legally certified signature. In the proceedings concerning the acceptance or rejection of the inheritance no decisions considering the case on its merits or formally finalizing the proceedings are issued. The proceedings is finalized when the act of admission is performed.⁴⁵
- opening and proving of a will,
- issuing a certificate to an executor of a will,
- assigning a guardian of an inheritance,
- discharging an executor of a will.

2.4. The Rechtspfleger's powers in the compensatory proceedings

The act amending the State Compensation for Victims of Some Intentional Offences Act of 3 April 2009⁴⁶ introduced a number of legislative changes which extended

⁴³ A. Jakubecki (in:) L. Ciulkin, A. Jakubecki, N. Kowal, *Krajowy Rejestr Sądowy.....*, p. 86.

⁴⁴ The act amending the Notarial Services Law Act and some other legal acts of 24 August 2007 (JL of 2007 No. 181, item 1287).

⁴⁵ J. Gudowski [w:] T. Ereciński, J. Gudowski, M. Jędrzejewska, *Kodeks...., t.3.*, p. 292.

⁴⁶ The act amending the State Compensation for Victims of Some Intentional Offences Act of 3 April 2009 (JL of 2003 No. 79, item 665).

the Rechtspfleger's powers by means of enabling them to perform acts in the proceedings concerning awarding compensation to the victims of some offences.

The act governs rules and arrangements governing the award of compensation and the conditions for cooperation between the Polish authorities and the authorities of other EU member states dealing with the procedures for obtaining such compensation (Article 1).

Compensation can be awarded to every person who – as a result of an offence – died or was deprived of sight, hearing, speech or the ability to procreate, or was inflicted with another serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation, or suffered a bodily injury or an impairment to health lasting longer than 7 days, as well as to victims of unintentional offences (e.g. victims of car accidents) and to the next of kin – the spouse or cohabiting partner of the victim, ascendant, descendant or adoptee if, at the time when the offence was committed, those persons were dependent on the victim who died as a result of the offence. Compensation can be awarded to a citizen of the Republic of Poland and of any other member state of the European Union, provided that the crime was committed in the territory of the Republic of Poland.

It should be noticed that some of the members of the European Union also provided their citizens with the right to be awarded with compensation also in cases of crimes committed outside their borders (Austria, Denmark, Finland, France, Luxembourg, Portugal, Sweden, Estonia). Unfortunately, no similar right was granted to the Polish citizens.

Compensation is awarded on a request of the entitled person. The competent body for awards of compensation is the regional court in whose jurisdiction the entitled person lives. Under the Article 8 para.1, the Rechtspfleger has the power to perform acts in the proceedings concerning compensation. In other words, the Rechtspfleger is entitled to perform all the activities in the proceedings, starting from the time of submission of the application to the court up until to a final judgment. The legislator decided that “(...) the proceedings concerning compensation is generally of non-litigious nature. The evidence includes mainly documents submitted by the applicant. Therefore, hearing the compensation cases during proceedings in open court would be useless. Hearing of the applicant is basically marginal and can be replaced with a written statement.”⁴⁷

Applications for compensation must be made within a deadline of two years from the commission of a crime. Applications for compensation should be lodged with the deciding authority no more than two years after the day on which the offence was committed, failing which the right to apply for compensation will expire.

Apart from personal information (e.g. the first name, surname, nationality and address of the applicant) applications for compensation should include information and documents showing grounds for awarding the compensate. However, the legislator ensured that the applicant would not have to collect numerous documents in order to submit the application.

⁴⁷ The substantiation of the draft of the act amending the State Compensation for Victims of Some Intentional Offences Act of 3 April 2009.

Compensation application forms are defined in the ordinance of the Ministry of Justice on the compensation application form of 7 September 2005.⁴⁸ Compensation is paid by the district court which issued the decision to award it within one month of the day on which the decision enters into force. Payment are effected from the state budget (Article 12).

The maximum possible amount of the compensation was set at PLN 12 000 (Article 6). The above-mentioned amount in some cases is nearly symbolical, though the compensation is not always awarded in this amount.

3. The Rechtspfleger's power to decide on the court fees in the civil cases

The main reason for providing the Rechtspfleger with the power to decide on the court fees in the civil cases was to relieve the judges of performing these acts of the civil proceedings which – according to the legislator – are not located within the actual administration of justice but include administration of budgetary resources.

Under the Civil Court Fees Act, the Rechtspfleger has the power to:

- return fees and advances for expenditures (Article 82);
- grant fees to witnesses, experts, translators and parties (Article 93 para. 1);
- perform acts concerning release from court fees, stipulated by the provisions of the Act (Article 118). This includes the power to examine motions for release from court fees, submitted by natural and legal persons as well as by organizational units without legal personality, which by law are granted legal capacity and social organizations not conducting economic activities, including dismissal and rejection of a motion (Article 107) and imposing a fine on a party which knowingly presented false information regarding their situation in order to obtain a release from court fees (Article 111). The Rechtspfleger can also perform all the acts concerning release from court fees, stipulated by the provisions of the Act (Article 118), including taking a promissory pledge from a person applying for the release. The pledge is given prior to the release. Right before taking the pledge the party should be instructed that obtaining the release on the grounds of false information may result in withdrawal of the release and imposition of a fine of up to 1000 PLN, or 2000 PLN in case of submitting a second motion including false information. The Rechtspfleger is entitled to carry an investigation in case of any doubts, rising from the circumstances of the case or the statements of the opposite party, concerning actual financial situation of a party applying for the release or already granted the release (Article 102 para. 3). The Rechtspfleger also has the power to return a motion for the release from court fees (Article 102 para. 2 and 4 and Article 130 § 1 C.C.P.);
- perform acts in cases concerning deferral of the court dues or spreading the dues into installments if a President of a regional or district court orders so (Article 125);
- calculate detailed costs of the proceedings in case if the court decided only on bearing the costs by parties (Article 108 § 1 C.C.P.) and ordered the Rechtspfleger to calculate the costs.

⁴⁸ The ordinance of the Ministry of Justice on the compensation application form on 7 September 2005 (JL of 2005 No. 177, item 1476).

4. The Rechtspfleger's powers in the enforcement proceedings

Under the Article 776 C.C.P., the enforcement title, if the law does not stipulate otherwise, constitutes the grounds for enforcement. The enforcement title is an official document, certifying the existence and the range of a creditor's claim, and *ipso facto* the existence and the range of a debtor's obligation. Commencing enforcement on the basis of the enforcement title is allowed when the title is given the enforcement clause.⁴⁹ By means of appending the enforcement clause the court determines that the enforcement title fulfills all requirements, which determine the possibility to commence enforcement, prescribed by the law.⁵⁰

The enforcement clause is appended during a proceedings which is separated from the general enforcement proceedings and subsidiary to it, i.e. the enforcement clause proceedings.⁵¹

Under the Civil Court Fees Act the Rechtspfleger was given the power to append the enforcement clause onto all the enforcement titles issued by them, with the exception of the order of payment (art. 781 § 3¹ k.p.c.). Under the act of 11 November 2006 the aforementioned provision was abolished and the Rechtspfleger's powers concerning the enforcement clause was extended. The Rechtspfleger has the power to append the enforcement clause onto: valid or subject to immediate enforcement court judgments on enforceable claims, court settlements⁵² (art. 777 § 1 pkt. 1 C.C.P.), valid or subject to immediate enforcement judgments issued by the Rechtspfleger (Article 777 § 1 pkt. 1¹ C.C.P.), other judgments, settlements and acts (including notarial deeds⁵³), which are subject to enforcement (Article 777 § 1 pkt. 3-6 i § 3 C.C.P.). The phrase "other" used by the legislator in the Article 777 § 1 pkt. 3-6 i § 3 C.C.P. refers to judgments as well as to settlements and acts, and thus includes e.g.: bank enforcement titles⁵⁴, titles issued in the bankruptcy and reorganization proceedings, settlements concluded before conciliation commissions established to settle disputes over labour relations.⁵⁵ The Rechtspfleger's power to append the enforcement clause does not include (art. 781 § 1¹ C.C.P.) cases where

⁴⁹ Z. Świeboda, *Komentarz do kodeksu postępowania cywilnego. Część druga. Postępowanie zabezpieczające i egzekucyjne*, Warszawa 2004, p. 93.

⁵⁰ W. Siedlecki, *Komentarz do k.p.c.*, Warszawa 1976, p. 1106.

⁵¹ M. Muliński, *Postępowanie o nadanie klauzuli wykonalności krajowemu tytułowi egzekucyjnemu*, Warszawa 2005, p. 5.

⁵² E. Wengerek, *Postępowanie zabezpieczające i egzekucyjne. Komentarz do cz. II kodeksu postępowania cywilnego, oprac.* E. Wengerek, M. Tyczka, wyd. 3 Warszawa 1998, p. 122.

⁵³ See.: A. Marciniak, *W kwestii oświadczenia dłużnika o poddaniu się egzekucji*, AUL, Folia Iuridica, 1989.; E. Gniewek, *Akt notarialny jako tytuł egzekucyjny [w:] Problematyka prawna prywatyzacji notariatu polskiego*, Kluczbork – Poznań 1996, p. 46 and next; A. Jakubecki, *Poddanie się egzekucji w akcie notarialnym*, Rejent 1998/12. p. 62-92; F. Zedler, *Poddanie się egzekucji aktem notarialnym*, Rejent 1998/7-8.; K. Knoppek, *Akt notarialny jako tytuł egzekucyjny*, Państwo i Prawo, 1991/12. 56-74, p. 67-73; Z. Świeboda, *Nadanie przez sąd klauzuli wykonalności aktowi notarialnemu*, Przegląd Sądowy 1999/3, p. 56-69; G. Bieniek, *Akt notarialny jako tytuł egzekucyjny*, Nowy Przegląd Notarialny, 1999/3, p. 36-41; M. Muliński, *Nadawanie klauzuli wykonalności aktom notarialnym*, Nowy Przegląd Notarialny 2002/1, p. 18-34; P. Gil, *Tytuł egzekucyjny w postaci aktu notarialnego wg przepisów art. 777 § 1 pkt. 4 i 5 k.p.c.*, Rejent 2000/1, p. 30-67, A. M. Arkuszewska, *Notarialny tytuł egzekucyjny*, Rej. 2007/6, p. 9.

⁵⁴ See.: P. Pogonowski, *Wystawienie dalszych bankowych tytułów egzekucyjnych a stosowanie przepisów Kodeksu postępowania cywilnego*, Rejent 2006/4, p. 32.

⁵⁵ See: M. Muliński, *Postępowanie o nadanie.....*, p. 156.

legal issues subject to settle exceed formal control of an enforcement title (Articles 778¹, 787, 787¹, 788 i 789 C.C.P.⁵⁶)

Extension of the Rechtspfleger's powers in the enforcement clause proceedings results from the fact that there is no examination and control over the content of the enforcement title as well as over the rights and obligations derived from the title and the judgments are of declaratory nature. Control performed in the enforcement clause proceedings is highly limited (includes only formal issues) and can be located within the execution of legal protection instead of administration of justice. Such an approach is connected with distinction of two types of enforcement clauses, i.e. declaratory and constitutive.⁵⁷ On the other hand, H. Mądrzak⁵⁸ distinguishes regular and atypical cases of appending the enforcement clause.

The declaratory enforcement clause is appended if the appending organ decides only that the enforcement title constitutes the grounds for enforcement.⁵⁹ The constitutive enforcement clause is connected with the necessity of modification of the enforcement's scope (mainly subjective) under the Articles 779 – 792 C.C.P., as the clause modifies the legal position of the subjects embraced with the enforcement proceedings.⁶⁰

Due to the fact that the Rechtspfleger has the power to append the enforcement clause, even to notarial deeds, the opinion expressed in the presented resolution should be accepted.

The Rechtspfleger also has the power to issue resolutions declaring executability of the European order of payment (Article 795⁶ § 2 C.C.P.), as well as certificates concerning judgments issued in the European proceedings on small claims (Article 795⁸ § 2 C.C.P.).

Under the Article 781¹ C.C.P., the petition for appending the enforcement clause should be examined immediately, yet not later than 3 days since the submission of the petition.

The enforcement clause is appended on request of the creditor. The Rechtspfleger does not investigate whether the enforcement title is justified but they examine if the presented document can be subject to enforcement.⁶¹

The enforcement clause is appended in the wording defined by the ordinance of the Ministry of Justice on the tenor of the enforcement clause⁶². The resolution on appending of the enforcement clause onto an enforcement title, which does not originate from a court, should include information concerning: the enforcement title, the parties and the

⁵⁶ See: H. Pietrzykowski, *Komentarz do części II Kodeksu postępowania cywilnego*, Warszawa 2006, p. 53 and next, P. Pogonowski, *Małżonek dłużnika w postępowaniu egzekucyjnym*, MoP 2002/20, p. 1021 and next, P. Pogonowski, (w:) G. Jędrejek, P. Pogonowski, *Działalność gospodarcza małżonków*, Warszawa 2002, p. 187.

⁵⁷ See: K. Korzan, *Sądowe postępowanie zabezpieczające i egzekucyjne w sprawach cywilnych*, Warszawa 1986, p. 143 and next, J. Jankowski, *Uczestnicy sądowego postępowania egzekucyjnego*, Łódź 1992, p. 43 and next.

⁵⁸ H. Mądrzak, *Funkcja i charakter postępowania klauzulowego*, AUWr, PPIA VIII, Wrocław 1976, p. 208 and next.

⁵⁹ K. Korzan, *Sądowe...*p. 143 and next, J. Jankowski, *Uczestnicy...*,p. 43.

⁶⁰ P. Pogonowski, *Postępowanie zabezpieczające i egzekucyjne*, Warszawa 2007, p. 149.

⁶¹ Resolutions of the Supreme Court of the Republic of Poland of 5 Septembers 1967, OSPiKA 1968, No. 5 item 90.

⁶² The ordinance of the Ministry of Justice on the tenor of the enforcement clause (JL of 2005, No. 17, item 154).

performance subject to enforcement (§ 180 of the ordinance on the rules of internal procedure of the common courts).

If the enforcement title includes a court judgment, the enforcement clause is located on the official copy of the decision, whilst a mention is put on the original of the judgment at the same time. In other cases the clause is located on the enforcement title presented by the parties (Article 783 § 3 C.C.P.). If the enforcement clause is appended without issuing a separate resolution, a proper notation, naming a person who received the enforcement title and the date of its issuing, signed by a director of a court secretariat, should be located on the original of a judgment or of a protocol of a court settlement (§ 188 ust. 1 of the ordinance on the rules of internal procedure of the common courts). Under the Article 783 § 4 C.C.P, if the enforcement clause includes a judgment issued in the electronic proceeding by reminder of payment, the clause is located only in the teleinformatic system, with the exception of cases enumerated in the following provisions, i.e. Articles 778¹, 787, 787¹, 788, 789 C.C.P.

In cases where the enforcement clause is appended *ex officio*, the enforcement title is left in the case files, and given to the credit only on request (§ 188 para. 4 of the ordinance on the rules of internal procedure of the common courts).

In relation to the aforementioned issues concerning the powers of the Rechtspfleger in the enforcement proceedings, legislative regulations adopted in other countries should be mentioned.

In Germany, the enforcement clause is appended onto the enforcement titles which originate from a court by a court secretary (*Urkundsbeamte*), whilst the so-called qualified clauses, especially those which supplement the content of the enforcement title (e.g. in case the executability of the title depends on a certain event which should be proved by a creditor) or alter the subjective range of the title (legal succession in the enforcement clause proceedings) are appended by the Rechtspfleger (*Rechtspfleger*). On the other hand, the notarial deeds are not – as in case of the Polish notarial deeds – do not require any enforcement clause. Therefore, the German creditor holding an enforceable notarial deed does not have to prepare a complaint in order to get an enforceable title, which gives him essential financial benefits resulting from elimination of the court proceedings and reduction of the time necessary to enforce claims.⁶³

On the other hand, the enforcement title in Austria is subject to a strict control performed by both the courts of first instance and the enforcement courts. The court of first instance confirms the executability of a title, whilst the enforceable court examines whether the conditions determining the admissibility of the enforcement have been fulfilled.⁶⁴

The French legislation stipulates that the first authenticated duplicate of a judgment given to the winning party is already appended with an enforcement clause (*formule exécutoire*), though a creditor should at first notify the debtor about the judgment and summon them to satisfy it.⁶⁵

5. The Rechtspfleger's powers in the international civil proceedings

⁶³ H. Kümpel, *Bank und Kapitalmarktrecht*, Köln 1995, p. 253; P. Osowy, *Powództwo cywilne w świetle nauki niemieckiej*, KPP, rok XII: 2003/2, p. 434.

⁶⁴ H. Hausmaninger, *The Austrian legal system*, 3 rd ed., Wien 2003, p. 227 za P. Pogonowski, *Postępowanie....*, p. 148.

⁶⁵ G. Couchez, *Procédure civile*, Paris 2002, P. Catala, F. Terre, *Procédure civile et voies d'exécution*, Paris 1976 za A. Machowska (in:) A. Machowska, K. Wojtyczek, *Prawo francuskie*, t. I, Kraków 2004, p. 239, p. 253.

Since July 1, 2009⁶⁶ the Rechtspfleger has been given the power to perform acts of legal aid in the international civil proceedings, with the exception of taking of evidence (Article 1130 § 2 C.C.P.).

Under the Article 1132 § 1 C.C.P. the Rechtspfleger has the power to file a motion for service of judicial writs to a person who has domicile, residence or seat abroad, in foreign court or other foreign organs. Motions are sent directly, if it is admitted by the law of a summoned country, or by hand of a Polish diplomatic agency or a consular office, though the above regulations does not exclude other ways of sending motions (Article 1131 § 2 C.C.P.). Under the Article 1133 § 1 C.C.P., the Rechtspfleger is also entitled to serve judicial writs to a person residing or having a seat abroad by hand of post and a registered letter with advice of delivery, if it is admitted by the law of country where the service takes place. If the service is not possible because of the refusal of execution of the motion by the foreign court or other foreign organ or due to long-term lack of execution, the Rechtspfleger can serve the writs in a way stipulated under Article 1133 § 1 C.C.P., even such a manner of service is not permitted by the law of country where the service takes place (Article 1133 § 2 C.C.P.). The aforementioned rules apply also to non-judicial writs (Article 1133¹ C.C.P.).

The Rechtspfleger has the power to file a motion for service of judicial writs in a Polish diplomatic agency or a consular office if an addressee is a Polish citizen residing abroad (Article 1134 C.C.P.). Under the Article 1135 § 1 C.C.P., the Rechtspfleger in the regional court where service takes place, has the power to serve writs on request of foreign courts and other foreign organs.

Motions for service of judicial writs filed by foreign courts or other foreign organs are executed in accordance with the Polish law. However, on request of a mover, the Rechtspfleger can apply manners of service other than those regulated by the Polish law, provided that it is not prohibited by the Polish law and is not incompatible with the fundamental rules of the legal order of the Republic of Poland (the public order clause). If a foreign court or another foreign organ files a motion for service to a person residing in the Republic of Poland without attaching a Polish translation of a writ subject to service, it is served to the addressees only if they accept it. An addressee who refuses to accept the writ should be instructed about adverse legal consequences arising abroad (Articles 1135¹ § 1 i 2 C.C.P.).

Service of judicial writs to persons with judicial immunities or immunities from execution residing in Poland or to other persons residing in buildings or places provided with immunity of residence under statutes, agreements or commonly accepted international customs, s executed by hand of the Ministry of Foreign Affairs. The above manner of service is also applied to the service of judicial writs to the Polish citizens who have a diplomatic or consular immunity and reside abroad. (Article 1135³ C.C.P.).

Any party with a domicile, residence or seat abroad, which did not appointed a legal representative residing in Poland is under obligation to appoint an agent for delivery in Poland. If no agent for delivery is designated, the judicial writs shall be filed in case records and will be deemed served. A party should be instructed on the aforementioned manner of service along with a first service. A party should also be instructed on the possibility of filing a reply to the originating pleadings, an explanation in writing and information on who can be appointed as a legal representative (Article 1135⁵ C.C.P.).

⁶⁶ The act amending the Code of Civil Procedure and other legal acts of 5 December 2008 (JL of 2008 No. 234, item 1571).

Regulations concerning ways of communication relating to legal aid between courts are also included in numerous international agreements signed by Poland, including especially the Convention on Civil Procedure concluded in Hague, on 1 March 1954⁶⁷ and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965⁶⁸.

The Convention on Civil Procedure stipulates that the service of documents addressed to persons abroad is effected on request of a consul of the requesting state, made to the authority designated by the State addressed. However, under the Articles 1 para. 4 and 9 para. 4, the provisions of the convention do not prevent two contracting states from agreeing to allow direct communication between their respective authorities.

Another international agreement concerning the service is the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The Convention determines that Each State should organize a Central Authority, which undertakes to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of the convention, in conformity with its own law (Article 2). The authority or judicial officer competent under the law of the State in which the documents originate forwards to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalization or other equivalent formality. The document to be served or a copy thereof should be annexed to the request. The request and the document will both be furnished in duplicate (Article 3). Each contracting State is free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents (Article 8). Under Article 5, the Central Authority of the State addressed serves the document itself or arranges to have it served by an appropriate agency, either by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed. Extrajudicial documents emanating from authorities and judicial officers of a contracting State may be transmitted for the purpose of service in another contracting State by the methods and under the provisions of the present Convention (Article 17).

6. Means of challenging the judgment of the Rechtspfleger

Assurance of a proper control over judgments of the Rechtspfleger, relating to their legitimacy and legality, is of high importance to the legal system. In order to initiate the aforementioned control, the legislator introduced a new mean of challenge⁶⁹, i.e. the

⁶⁷The Convention on Civil Procedure of 1 March 1954 (JL of 1963, No. 17, item 90).

⁶⁸The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 (JL of 2000, No. 87, item 968).

⁶⁹ More on means of appeal and means of challenge: *System prawa procesowego cywilnego, t. III – Zaskarżanie orzeczeń sądowych*, pod red. W. Berutowicz, Warszawa, Wrocław, Kraków, Gdańsk, Łódź 1986, p. 11 and next; W. Siedlecki, *Zasady orzekania oraz zasady zaskarżania orzeczeń w postępowaniu cywilnym w świetle orzecznictwa Sądu Najwyższego*, Warszawa 1982, p. 37 and next; A. Akerberg, *Środki odwoławcze*, Warszawa 1933, p. 9 and next; B. Bładowski, *Środki odwoławcze w postępowaniu cywilnym*, Kraków 2008, p. 11 and next; Tenże, *Zażalenie w postępowaniu cywilnym*, Kraków 2006, p. 13 and next; W. Broniewicz, *Apelacja, kasacja i skarga kasacyjna w postępowaniu cywilnym (problematyka terminologiczna)*, PiP 1999/3, p. 55 and next; Tenże, *Istota i rodzaje zażalenia w postępowaniu cywilnym*, PS 2001/1 p. 3 and next; T. Erciński, *Apelacja i kasacja w procesie cywilnym*, Warszawa 1996, p. 30 and next; A. Góra – Błaszczkowska,

complaint on actions of the Rechtspfleger, regulated by the following provisions: Articles 398²², 398²³ and 518¹ C.C.P. as well as Article 8 para.1 of the State Compensation for Victims of Some Intentional Offences Act.

Solutions adopted in relation to challenging the actions of the Rechtspfleger is a result of implementation of fundamental constitutional guarantees, i.e. the right to a court (Article 45 of the Constitution of the Republic of Poland⁷⁰), the principle that statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights (Article 77 para. 2 of the Constitution of the Republic of Poland) and the guarantee that each party shall have the right to appeal against judgments and decisions made at first stage (Article 78 of the Constitution of the Republic of Poland)

Under the Article 398²² § 1 of C.C.P., the complaint on actions of the Rechtspfleger can be filed against judgments deciding a matter on its merits, judgments finalizing the proceedings, judgments enumerated under Article 394 para. 1 subpara. 1, 2, 4², 5-9 of C.C.P. , judgments appending the enforcement clause, judgments declaring executability of a European order of payment and judgments concerning certificates mentioned under Article 795⁸ of C.C.P. , unless a special regulation stipulates otherwise.

The complaint on actions of the Rechtspfleger is not a mean of appeals, though it is similar.⁷¹

The complaint on actions of the Rechtspfleger can be files against invalid judgments, thus it is an ordinary mean of challenge⁷². It also is a mean of a nullification nature, as lodging the complaint causes (with some exceptions) the loss of legal validity of the judgment. The complaint is examined not by a court of a higher instance but by the court that issued the judgment in question (Article of 398²² § 3 C.C.P.).

The complaint on actions of the Rechtspfleger is of a suspensive nature, as lodging the complaint does not lead for the judgment in question to become final and valid. The suspensive nature of the complaint refers especially to the following complaints: on making or removing an entry in a land and mortgage register, on a resolution concerning court fees, on a resolution refusing to appoint a legal representative, on a resolution concerning appending the enforcement clause, on a resolution declaring executability of a European order of payment and on a resolution concerning issuing a certificate mentioned under the Article 795⁸ of C.C.P. The complaint is also of a restorative nature as it leads to

Apelacja. Zażalenie. Wznowienie postępowania. Skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia. Komentarz, Warszawa 2006, p. 25 and next; A. G. Harla, Terminy do wniesienia kasacji cywilnej. Uwagi de lege lata i de lege ferenda, PS 2001/7-8, p. 46 and next; Harla A.G., Legislacyjny wybór środka odwoławczego od orzeczenia merytorycznego w przedmiocie ogłoszenia upadłości – uwagi de lege lata i de lege ferenda, PPH 2008/3; P. Pogonowski, Skarga o wznowienie sądowego postępowania cywilnego po zmianach z 2004 r., PPH 2005/8; Tenże, Apelacja i skarga kasacyjna – wybrane problemy częściowego zaskarżenia wyroku, Prawo – Administracja – Kościół 2004/3; M. Waligórski, Środki odwoławcze kodeksu postępowania cywilnego w świetle materiałów Komisji Kodyfikacyjnej, Nowy Proces Cywilny 1933, No. 10, p. 300 and next; A.M. Arkuszewska, Środki odwoławcze w postępowaniu uproszczonym ze szczególnym uwzględnieniem apelacji, Gazeta Sądowa 7-8, 9/2006, p. 6 and next; A.M. Arkuszewska, Zaskarżanie orzeczeń i zarządzeń wydanych w europejskim postępowaniu w sprawie drobnych roszczeń, EPS 8/2011, p.

⁷⁰ The Constitution of The Republic of Poland of 2 April 1997 (JL of 1997, No. 78, item 483).

⁷¹ M. Wójcik (in:) J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. Wójcik, *Kodeks postępowania cywilnego. Komentarz*, pod red. A. Jakubecki, Kraków 2008, p. 568.

⁷² K. Weitz (in:) J. Jodłowski, J. Lapiere, T. Misiuk-Jodłowska, Z. Resich, K. Weitz, *Postępowanie cywilne*, Warszawa 2005, p. 476.

re-investigate the case within the same limits as the *Rechtspfleger*.⁷³ A. Maziarz – Charuza claims that the complaint has also two other features, as it is of a restitutive nature, i.e. lodging the complaint makes the judgment legally ineffective, and of a repressive nature because it aims at changing or eliminating a defective judgment, which in fact denotes *a posteriori* elimination of the *Rechtspfleger*'s faults.⁷⁴

The *Rechtspfleger* has the power to issue an order of payment in the proceedings by reminder of payment, in the electronic proceedings by reminder of payment and in the European proceedings by writ of payment. Under Article 47¹ of C.C.P., in cases of issuing orders of payment the *Rechtspfleger* has been given judicial authority. Therefore, a mean of challenge of orders of payment does not include the complaint but an objection⁷⁵. In other words, in the aforementioned situations a mean of challenging judgments is not a consequence of the type of organ deciding a case but results from a type of a judgment.

The objection can be lodged only by a defendant, whilst a plaintiff may lodge an appeal against an order of payment. On the other hand, complaints on actions of the *Rechtspfleger* can be lodged against judgments other than orders of payment (e.g. resolutions concerning civil court fees).⁷⁶

The objection is examined not by a court of a higher instance but by a regional or district court that issued a judgment in question. If an order was issued by the *Rechtspfleger*, the objection is filed in a court, where an action was brought (Articles 503 § 1 and 505²⁸ in relation with Article 503 § 1 C.C.P.) and this court – in the proceedings by reminder of payment - has the power to re-examine a case. In the electronic proceedings by reminder of payment, lodging the objection leads to transferring a case to a court having general jurisdiction, to be examined in an ordinary procedure (Article 505³⁶ § 1 C.C.P.). The objection is considered to be of an oppositional nature⁷⁷, as it aims at challenging a judgment itself and a plaintiff's demand, and without it an order of payment would become final and valid. The objection is also a reparatory mean as the re-examination of a case aims at elimination of certain faults that occurred during a previous proceedings, which provided grounds for issuing the judgment in question (in particular faults concerning the lack of defendant's cooperation, which, if present, could result in a different outcome).⁷⁸

In the literature of the interwar period the objection was regarded differently. A. Thon⁷⁹ considered it to be a simple act of civil the proceedings (free from requirements of every procedural writ) which shows a defendant's will to hold an ordinary civil proceedings.

The objection should be submitted on an official form if an action was brought in this manner (Article 503 § 2 C.C.P.). In other cases, the objections should be submitted in

⁷³ A. Maziarz – Charuza, *Skarga na orzeczenie referendarza sądowego po nowelizacji z dnia 2 marca 2006r.*, PS 2007/10, p. 126.

⁷⁴ *Ibidem*, p. 126

⁷⁵ A.M. Arkuszewska, *Charakter sprzeciwu od nakazu zapłaty – postępowanie upominawcze, europejskie postępowanie nakazowe, elektroniczne postępowanie upominawcze*, Monitor Prawniczy 17/2011, p. 18 and next.

⁷⁶ See also M. Uliasz, *Kodeks postępowania cywilnego. Komentarz*. Warszawa 2008, p. 745.

⁷⁷ S. Dalka, *Sprzeciw w sądowym i arbitrażowym postępowaniu upominawczym*, Przegląd Ustawodawstwa Gospodarczego 1978/12, p. 366.

⁷⁸ M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu*, Warszawa 1947, p. 635.

⁷⁹ A. Thon, *Postępowanie upominawcze według k.p.c.*, Polski Proces Cywilny, 1935/7-8, p. 220 and next

a form of a procedural writ, satisfying all the necessary requirements stipulated under the following Articles: 126, 126¹, 126², 127, 128 C.C.P. All procedural writs, including the objection to an order of payment, in the electronic proceedings by reminder of payment should be submitted electronically. The above rule unconditionally applies to every plaintiff and so procedural writs submitted by plaintiffs in other manner than electronically have no legal consequences in the proceedings (Article 505³¹ § 1 C.C.P.). The rule also applies to those defendants who submitted a procedural writ electronically therefore, the obligation to inform a defendant on legal consequences of electronic submission of a procedural writ is essential and should be executed together with a first service (Article 505³¹ § 3 and 4 C.C.P.).

In order for the objection to be effective, it should be submitted in a proper time period, i.e. two weeks since the service of an order of payment to a defendant. Information concerning the aforementioned requirements is served together with an order and petition (Articles 502 § 2 and 505²⁸ in relation with Article 502 § 2 C.C.P.). Lack of information causes that time limit for submission of the objection does not commence.⁸⁰ The objection submitted after time limit will be overruled. However, restitution of time limit is possible provided that conditions enumerated under Article 168 and next C.C.P. are fulfilled.

The objection is of a nullification nature (restitutive, and thus conditional), as lodging the objection causes the loss of legal validity of the order in question, though only in a part embodied with objection (Article 505 § 2 C.C.P.). The part of the order in question which was non embodied with the objection remains legally valid and becomes an enforcement title. The loss of legal validity of an entire order of payment occurs only if the objection aimed at every claim and every person the order in question refers to.⁸¹ The nullification nature of means of challenge refers only to the objection to order of payment and to the complaint on actions of the Rechtspfleger. Proper submission of the objection on the electronic proceedings by reminder of payment causes that an order of payment becomes invalid and a case is transferred to a court having general jurisdiction, to be examined in regular procedure (Article 505³⁶ § 1 C.C.P.). The Article 505³⁵ C.C.P. clearly determines that application of the Article 503 § 1 C.C.P. in the electronic proceedings by reminder of payment is excluded, thus submission of an objection which refers only to part of an order is inadmissible.

After the objection is submitted, the presiding judge assigns a trial, though it is not required in cases where a matter would not be considered on its merits and a special regulation allows a case to be tried at a closed session, e.g. dismissal of a suit, discontinuance of proceedings due to withdrawal of a suit (Articles 199 § 3, 355 § 2 C.C.P.).⁸² Provisions relating to the proceedings by reminder of payment include cases where a case can be considered on its matters during a closed session (Article 498 § 2 C.C.P.).

When the objection is submitted in the electronic proceedings by reminder of payment and a case is transferred to a court having general jurisdiction, the Rechtspfleger has the power to summon both parties to supplement the objection and the suit in a way relevant to procedure under which the case would be examined. The plaintiff should also be summoned to correct formal shortages. Failing to comply with the summons results in discontinuance of the proceedings (Article 505³⁷ C.C.P.).

⁸⁰ Resolutions of the Supreme Court of 3 May 1996, III CO 12/66, OSPiKA 1967, No. 1, item 2).

⁸¹ M. Jędrzejewska (in:) T. Ereciński, J. Gudowski, M. Jędrzejewska, *Kodeks...t. 2*, p. 992.

⁸² M. Manowska, *Postępowania odrębne w procesie cywilnym*, Warszawa 2003, p. 186.

The defendant who receives a European order for payment, may lodge a statement of opposition with the court that issued the order for payment. Under the Regulation of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure⁸³, the statement of opposition must be sent within 30 days of the order being served on the defendant. Statements of opposition are lodged using the form in Annex VI (form F), which defendants receive with the European order for payment. Defendants indicate in their statement of opposition that the claim is contested, without having to specify their reasons. The Regulation does not refer to a possibility of lodging the opposition by only one defendant in relation to only one of the claims embraced with an order.

The statement of opposition should be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin (Article 16 para. 4). The statement of opposition should be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form, it should be signed in accordance with Article 2(2) of Directive 1999/93/EC. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements (Article 16 para. 5). The regulation also determines general effects of lodging the statement of opposition. Under Article 17, if a statement of opposition is entered within the proper time limit, the proceedings continue before the competent courts of the EU country of origin in accordance with the rules of ordinary civil procedure, unless the plaintiff has requested that the proceedings be terminated in that event. The Polish Code of Civil Procedure specifies the general provisions of the regulation by stipulating that if a statement of opposition is entered an order for payment becomes invalid and a court examines a case in a proper procedure (Article 505¹⁹ § 1 C.C.P.). The plaintiff is informed if the defendant entered a statement of opposition and whether a case was transferred to be examined in accordance with the rules of ordinary civil procedure, though a plaintiff may still request the proceedings to be terminated which leads to discontinuance of the proceedings (Article 505¹⁹ § 4 C.C.P.).

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