

Summary

The goal of the judicial application of law is the good to be achieved by making the informed choice of a specific course of action in relation to a strictly defined subject, as a result of the decision-maker's volitive stance, motivating him and prompting him toward that good. The highest purpose of a judicial decision, understood as the welfare of a human person, is the manifest characteristic of a court ruling that is so desirable. However, it cannot be pursued at any price and through any possible means, and especially not at the cost of a third person's welfare.

Judicial proceedings of any kind, including contentious civil proceedings, are conducted with regard to and participation of the interested parties whose legal sphere is going to be affected by the outcome, as well as the participation of those competent to protect the legal sphere of another. The primary participants in contentious civil proceedings are the claimant (plaintiff) and the respondent (defendant), and in non-contentious proceedings the applicant (movant) and the (other) participant, in *interim* proceedings the obligee and the obligor, and in enforcement (collection, foreclosure) proceedings the creditor and the debtor. These entities occupy a central position in the proceedings. However, the matter analysed in this dissertation is not the legal status of all these entities. On the contrary, it is the procedural situation of the entity whose role in civil proceedings has not yet been the subject of sufficient scholarly interest.

Namely, this concerns the category of participants the lawmaker refers to as *third parties*. It must be noted that, in provisions regulating contentious civil proceedings, the lawmaker uses this expression *in.al.* to denote an entity participating in a civil case and only being involved on account of a substantive relationship with the subject-matter of the proceedings. The principal purpose of this work was to show what legal status such third parties have in contentious civil proceedings. The pursuit of this purpose was accompanied with analysis answering a number of research problems. Those related *in.al.* to the determination of what persons are entitled to the status of third parties and what the *ratio legis* is of expanding the cast of civil proceedings to include them. This would not have been possible without reflecting on what their participation in a civil case is supposed to protect against, and, subsequently, what negative procedural developments it prevents. Furthermore, the discussion at hand would not be reliable without attempting

to find answers to the question of the legally protected value on account of which the lawmaker affords this status to certain entities. The core point of departure was the assumption that this value was their protected legal interest. The current state of research, the regard to the rectitude of the use of procedural concepts while discussing the subject, and the relatively broad meaning of the term, have all eventually ruled in favour of the correctness of the thesis.

The state of danger to a specific protected legal interest of a third person from one of two types of infringements justifies such a person's participation in the proceedings, affects that person's procedural situation and determines the availability of specific rights or remedies. Two basic ways of interfering with the legal spheres of third parties can be distinguished. Where there is a risk of infringement of protected legal interests of third parties with indirect results, the participation of the entities at hand comes down to providing assistance to one of the parties in the proceedings. It is effected through the institution of simple (non-independent) side intervention. On the other hand, where there is a fear of flagrant infringement of protected legal interests, third parties are entitled to the status of parties to the proceedings. This situation occurs when it can be held objectively that the relevant civil proceedings should not be taking place at all or that the relevant foreclosure should not proceed with regard to the specific thing or right. To offer a competent defence of his possessions such a third party is compelled to take the claimant's stand and therewith, by bringing a separate suit, to protect his (own) legal interest. It is for this reason that the person — depending on the situation and type of remedy used — must sue at least one of the parties to the original proceedings. A suit against both occurs with main intervention, while for the anti-foreclosure interpleader under Article 841 of the Code of Civil Proceedings, if the debtor denies the claimant's rights, also that debtor must be sued beside the creditor.

The goal of embarking on a general reflection on the position of third parties in contentious civil proceedings was to answer the question of what remedies are available for the protection of the legal interests of third parties, which at the same time guarantee their participation in contentious civil proceedings. Sometimes, adequate protection of one's own legal interest is possible through accession to already pending proceedings on the side of one of the parties. At other times it is necessary to bring a separate suit and therewith initiate wholly different proceedings. Due to the need to protect one's own legal interest, the third party decides to accede to the case as an independent side

intervenor, non-independent side intervenor, main intervenor, or anti-foreclosure interpleader claimant.

It is worth recalling that Polish scholars of the *interbellum* period accurately linked the institutions discussed here: the main intervention was regarded as a type of side intervention, while a suit for foreclosure exemption was regarded as a type of main intervention. These remedies are connected by a superordinate *ratio legis* reducible to the protection of the legal interests of third parties.

In Polish Code of Civil Proceedings the lawmaker has regulated a number of institutions guaranteeing adequate legal protection to the entities seeking it. To this end the lawmaker grants them the benefit of a multitude of legal remedies and equips other citizens with suitable tools preventing their abuse, *i.e.* use inconsistent with the purpose, as well as indirectly protecting the parties from themselves wherever there exists a risk that their own incompetence could harm non-participants.

A third party's own legal interest could be infringed by the court's ruling in the case. This is the consequence of a conscious tactic on the part of at least one of the litigating parties aiming to win at any price and with the use of all possible options, often including activities that run counter to the basic principles of civil proceedings, while taking advantage of procedural gaps or of specific regulations used inconsistently with their purpose. The legal protection afforded through contentious civil proceedings cannot be and is not in fact unconditional. In admitting third parties to contentious proceedings, the lawmaker shows clearly, to the litigating parties in particular, that ends do not justify the means. Infringement of third parties' legal interests could also be the consequence of incompetent pursuit by the claimant or the respondent of that party's own case in the proceedings. Thereby, the lawmaker protects non-parties from two extremes, which the author terms, respectively, abuse of procedural rights and procedural indolence.

The work comes divided into three chapters. Who the third parties are had to be determined by comparison to other entities participating in contentious civil proceedings. The discussion of this subject is contained in the first chapter. This made it possible to set apart these entities' distinguishing and identifying characteristics. Third parties are certainly not parties to the original proceedings. In every case, however, their relation to those proceedings is strong enough for the lawmaker to concede them the term. That is so even when they take the position of claimants or themselves initiate proceedings through availing themselves of either main intervention or the Article 841 anti-

foreclosure interpleader. What is worth emphasizing, even when they take the active side, the lawmaker does not cease referring to them as *third parties*. Continuing to do so emphasizes their dependent relationship with the original proceedings.

Completing in the first chapter the analysis of the procedural situation of the entities participating in the proceedings without the status of third parties made it possible to narrow down the pool of remedies to the group — presented in the second chapter — that, in essence, enables the accession of the category of persons concerns herself with here, that is main intervention, side intervention with its division into independent and non-independent side intervention, joinder (impleader) or action for the released of a seized thing from judicial attachment. The discussion of these institutions proceeded in a manner permitting the identification of how the status of third parties in contentious civil proceedings affects the scope of rights available to them under the various remedies. The analysis of each began with justifying why the application of the concept of third party to it was not only possible but proper. Next, the author proceeded to prove the position under which having the status triggers a number of tightly interconnected consequences of mainly procedural nature. Thus, it appears to be a fully justified thesis that assumption of the status of a third party in contentious civil proceedings projects itself on the scope of the entity's procedural rights and obligations. Attached are certain consequences that may be regarded as exceptions from general rules, or, more figuratively, as the necessity of suffering the 'existing state of things'. The crowning achievement of each of the subchapters of chapter two was the identification and discussion of in what manner the legal sphere of the discussed entities is protected through the specific remedy.

Having defined the concept of third parties and discussed the various remedies protecting their legal interests made it possible to embark on further research leading to an answer to what the *ratio legis* was of expanding by precisely their inclusion the cast of civil proceedings. This is the theme of the third chapter. It starts from the discussion of two negative procedural developments of which the analysis appears to be indispensable in the correct formulation of the research problem. To minimize their potential harmful impact, especially in the sphere of third-party rights, the lawmaker has introduced a number of institutions to protect their legal interests. Namely, the mischief to correct was the abuse of procedural rights, and procedural indolence. Just as much as the former attracts scholarly interest, with more strength after the amendment of Article 3 of the Code of Civil Proceedings with the Act of 16 September 2011 on Amending

the Act — Code of Civil Proceedings and Certain Other Acts, in which connection it should not be overly difficult to capture the meaning of the term itself, the terminology used in describing the latter is the author's own proposal.

Excessive ease of the action leading to the solution of legal problems that consists in the introduction of a new concept may awaken justified concerns that any solution so achieved is a mere appearance. Furthermore, any such method is burdened with the risk of equivocation. Its value may be inversely proportional to the ease with which it is achieved. However, there is no such danger in this particular case. On the contrary, replacing the term with expressions already existing in the language of lawyers such as 'helplessness of a party' or 'defective conduct of the proceedings' would appear to be incorrect, if only because such terms already carry their own specific weight of meaning that even causes them to be identified with the corresponding legal institutions such as court-appointed power of attorney or side intervention.

The following two fragments of the third chapter contain an attempt to show on account of what protected legal *bonum* the lawmaker allows the accession of the persons discussed. The point of departure on the quest for an answer to this question was a concise definition of the impact of court rulings and bailiff foreclosures on the legal sphere of non-parties. A more general presentation of the matter, i.e. not limited to third parties in the understanding set forth in the first chapter of this work, made it possible to demonstrate that not all of the analysed circumstances justify accession of the discussed entities to the case and subsequently identify those which do.

Civil proceedings are fair when, among others, they are just. A civil case pending between the parties, i.e. respectively claimant and respondent, creditor and debtor, as a *res inter alios gesta*, ought not to have any impact on the rights of third parties, let alone infringe on them in a manner distorting the justice of the law in action. This is because the achievement of the goal of civil proceedings that consists in extending adequate protection to those who seek it cannot be unconditional. One of the guarantees of a fair trial are, therefore, also the institutions through which the cast of entities appearing in contentious civil proceedings is expanded to include third parties.