Zeszyty Naukowe KUL 60 (2017), nr 3 (239)

Maciej Rzewuski*

Adversarial character of civil appeal proceedings – selected issues

1. Introductory notes

Established principles constitute the elementary component of any law system. They determine the legally binding norms that hold priority over other components of a particular legal order[1]. Furthermore, principles of law also play numerous different functions – they set trends in legislative processes and determine the methods for interpreting regulations of law. Thus, they are an inseparable component of a particular legal order and remain suitable for acknowledging and appropriate interpretation of applicable legal regulations[2].

Among the particular branches of law, one can also distinguish the so-called primary principles of law. They mirror the basic assumptions of a specific area of law. Adversarial principle is regarded as one of such principles within the field of civil proceeding. In the most general approach, the principle indicates the burden that rests on the parties – presenting factual situation and invoking

* Dr Maciej Rzewuski – Katedra Postępowania Cywilnego, Uniwersytet Warmińsko-Mazurski w Olsztynie, e-mail: rzemac@interia.pl

[1] See H. Mądrzak, *O pojmowaniu naczelnych zasad postępowania cywilnego*, [in:] *Proces i prawo. Rozprawy prawnicze*, ed. E. Łętowska, Wrocław-Warsaw 1989, page 389 and next. *[Comprehending primary principles of civil proceeding];* H. Kupiszewski, *Prawo rzymskie a współczesność*, Warsaw 1988, p. 113 and next. *[Roman law and modernity]; W.* Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warsaw 2014, p. 162 and next. *[Roman law. Basics of private law]*; P. Pogonowski, *Znaczenie rzymskich paremii procesowych dla współczesnej procedury cywilnej*, [in:] *Starożytne kodyfikacje prawa*, ed. A. Dębiński, Lublin 2000, p. 187 and next. *[Value of Roman process maxims for modern civil procedure]*

[2] J. Gudowski, *O kilku naczelnych zasadach procesu cywilnego – wczoraj, dziś, jutro*, *[On Some Fundamental Principles of Civil Proceedings – Yesterday, Today and Tomorrow]* [in:] *Prawo prywatne czasu przemian. Księga pamiątkowa dedykowana profesorowi Stanisławowi Sołtysińskiemu*, ed. A. Nowicka, Poznań 2005, p. 1015-1029. *[Private Law in a Period of Changes. A Commemorative Book in Honour of Professor Stanisław Sołtysiński]*

evidence to support it. Under this rule, the cognition of civil court is limited solely to assessing the evidence introduced by parties and providing a suitable decision on this basis[3].

According to assumptions of the legislator, introduction of the adversarial principle ought to significantly contribute to creating a quick and efficient mechanism for bringing to justice based on evidence invoked by the parties. Winning the court case ought to constitute a reward for appropriate fulfillment of one's law-imposed obligation to present rationale[4].

2. Adversarial principle– historical background.

The adversary system of civil proceedings in Poland was subject to significant evolution. The need for applying it occurred within the doctrine by the end of the 19th century. Some authors deemed this principle as an element of availability of the process which limits the role of court for conducting legal assessment of evidence presented by parties and thus, guarantees impartiality of judges[5]. On the other hand, those who favor the inquisitorial system identify the adversarial principle as a limitation of the principle of material truth[6].

In 1930, despite significant differences of approach, it was finally agreed to introduce the adversarial principle into Code of Civil Procedure. Besides certain regulations deemed exceptional in character (such as Article 244, Article 266

[3] J. Jodłowski, Z. Resich, J. Lapierre, T. Misiuk-Jodłowska, K. Weitz, *Postępowanie cywilne*, Warsaw 2010, p. 128 *[Civil proceeding]*; P. Marciniak, *Zasada kontradyktoryjności a ewolucja i współczesny kształt postępowania cywilnego – zarys problematyki*, Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza 2013, no 1, p. 97. *[Adversarial principle and modern shape of civil proceeding –overview of problem]*

[4] See also P. Marciniak, *Zasada kontradyktoryjności…*, p. 111. *[Adversarial principle and modern shape of civil proceeding –overview of problem]*

[5] See K. Piasecki, *Postępowanie sporne rozpoznawcze w sprawach cywilnych*, Warsaw 2011, p. 86 *[Litigation in civil cases];* M. Waligórski, *Polskie prawo procesowe w świetle zasady kontradyktoryjności*, SC 1963, p. 12 and next *[Polish Law of Civil Procedure. Function and Structure of the Proceedings];* Z. Resich, *Zasada dyspozycyjności i kontradyktoryjności w procesie cywilnym PRL*, PiP 1957, z. 7-8, p. 64. *[The Principle of a Free Exercise by the Parties of Their Rights and Adversarial Principle in Civil Proceedings of People's Republic of Poland]*

[6] W. Broniewicz, *Zasada kontradyktoryjności procesu cywilnego w poglądach nauki polskiej (1880-1980), [The Principle of Adversarial Civil Proceedings in the Views of Polish Legal Doctrine (1880-1980)],* [in:] *Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha*, ed. M. Jędrzejewska, T. Ereciński, Warsaw 1985, p. 39 and next. *[Studies on Civil Procedural Law. Commemorative Book in Honour of Zbigniew Resich],*; A. Jakubecki, *Naczelne zasady postępowania cywilnego w świetle nowelizacji kodeksu postępowania cywilnego*, [in:] *Czterdziestolecie kodeksu postępowania cywilnego. Zjazd katedr postępowania cywilnego w Zakopanem*, Kraków 2006, p. 351-352. *[Forty years of Code of Civil Procedure. Rally of departments of civil proceeding in Zakopane]*

and Article 323), which provide the court the possibility of take evidence *ex officio*, the whole act was based on the principle of formal truth.

This was also recognized by the judicature of that period. For example, it is worth referring to the ruling of Supreme Court of 28th February 1935, III C 1217/34, where it was underlined that "if the parties cannot know in advance which circumstances or evidence will be decisive for making judgment, they ought to present material that either provides grounds for the claim or defend against complainant's claim in full. Therefore, Article 404 indicates the need to present the whole evidence in the 1st instance. The role of the appeal instance is to control the appropriate proceeding and supervise suitable application of material law (…). As for determining the material truth (…) the Code of Civil Procedure contains regulations that taken out of the whole might speak against the principle of supporting the dispute by parties, such as Article 244, second sentence of Article 245 § 1, Article 304, Article 316, Article 323 of Code of Civil Procedure. Nonetheless, this covers occasional provisions as generally only the circumstances and evidence invoked by parties are taken into account. Thus, no principle of establishing absolute truth can be derived from the abovementioned provisions"[7].

In addition, in the justification of this ruling, in relation to ruling of 5th April 1935, C III 101/34[8], it was established that "in fact, the concept of ability and the need to point to facts and evidence (…) ought to be applied relatively. This means that specific circumstances of a particular case are of significant importance, especially the personal properties of each party. The party which has no ability to refer to either aggressive or defensive material ought to be treated differently from the party that, after thorough consideration of such material, is able to determine which facts and evidence would be decisive for the judgment of the case"[9].

After some time, source literature started to recognize and underline the advantages of the adversarial principle. The most significant advantages include: aim for effective discovery of the truth, correlation with the private character of cases dealt during the proceeding, encouraging activity of the parties, providing the judge with an opportunity to maintain the status of an impartial arbiter and removing the risk of excessive responsibility of judges[10]. Nonetheless, the

[7] LEX no 1634523.

[8] LEX no. 329816.

[9] Justification of Supreme Court ruling of 28th February 1935, III C 1217/34.

[10] W. Siedlecki, *Zasada kontradyktoryjności w polskim procesie cywilnym*, PiP 1953, z. 2, p. 233 *[Adversarial principle in Polish civil process];* P. Marciniak, *Zasada kontradyktoryjności…*, p. 100 *[Adversarial principle…];* W. Broniewicz, *Zasada kontradyktoryjności…*, p. 45 *[Adversarial principle…]*; H. Dolecki, *Ciężar dowodu w polskim procesie cywilnym*, Warsaw 1998, p. 84. *[The burden of evidence in Polish civil process]*

Code of Civil Procedure of 17th November 1964 was based on the principle of material truth. As a result, discovering the truth became the main objective of civil proceedings.

Against this background, a certain substantive dispute arose between W. Siedlecki and J. Jodłowski regarding the understanding of adversarial principle. The first Author favored the necessity to ensure co-operation between parties in order to discover the truth and limit the role of court to supportive and eventually complementary functions[11]. The second Author, on the other hand, criticized all attempts to achieve liberalization of the adversarial principle and denied the correctness of assigning courts with an excessive role in this area[12].

Rulings of that period seemed to follow the interpretation of adversarial principle as proposed by W. Siedlecki. The resolution of Supreme Court of 27th June 1953, CPrez 195/52, contained guidelines for the justice system and indicated that "a socialist state (…) appoints the justice system with the task of providing comprehensive explanation of legal relationship in each civil proceeding, establishing the factual state and handing down a judgment compliant with objectively existing facts, the so-called objective truth (…). The Soviet process understands the adversarial principle as co-operation between both parties and the court in determining the actual state of the case and burdens the court with the obligation to explain the actual rights and mutual relations between parties. However, the court may not be limited to statements and materials invoked by parties, but ought to be an active and creative force that seeks to conclude an appropriate decision"[13].

Referring to appeal procedure subject to hereby article, the Supreme Court ruled that "(…) the aim of a revision proceeding is to control the legality and suitability of the resolution of court of 1st instance. The review court normally does not take evidence nor determines the factual state (…). Pursuant to Article 18 of Act of 20th July 1950 amending the regulations of civil proceedings in the form of Act of 29th December 1951, the review court is obliged to collect evidence – take arguments and evidence from parties pursuant to Article 236 Code of

[11] W. Siedlecki, *Zasada kontradyktoryjna i zasada śledcza w polskim procesie cywilnym*, PiP 1953, z. 2, p. 231 and next *[Adversarial principle and inquiry principle in Polish civil process]*; same, *Zasada kontradyktoryjności (sporności) czy zasada współdziałania podmiotów postępowania cywilnego?*, PiP 1975, z. 5, p. 69-70 *[The Adversarial Principle or the Principle of Cooperation Between the Participants in Civil Proceedings]*; same, *Zasady wymiaru sprawiedliwości i naczelne zasady procesu cywilnego w świetle orzecznictwa Sądu Najwyższego*, Zeszyty Naukowe Instytutu Badania Prawa Sądowego 1978, no. 10, p. 46-48. *[The Fundamental Principles of the Civil Proceedings in the Light of rulings of Supreme Court]*

[12] J. Jodłowski, *Zasady naczelne socjalistycznego postępowania cywilnego [The Fundamental Principles of the Socialist Civil Proceedings],* [in:] *Wstęp do systemu prawa procesowego cywilnego*, ed. J. Jodłowski, Wrocław-Warsaw 1974, p. 84-96. *[Introduction to the System of Civil Procedural Law],*

[13] LEX no. 1673838.

Civil Procedure – only in the event that neither the party was able to present facts and evidence in the 1st instance nor court of 1st instance did not have the obligation to investigate facts and evidence *ex officio* as well as admit evidence. Therefore, this includes the rules on facts and evidence that occur after the case was closed in the 1st instance or the discovered after such date. Nonetheless, such material can serve as the basis for seeking annulment of judgment. Afterwards, the court of 1st instance will take necessary evidence. In case when the evidence collected by review court consists of documents and evidence sufficient to give judgment, the review court takes this evidence on its own accord"[14].

3. Adversarial character after recent amendments to Code of Civil Procedure

By the end of the 20th century, the adversarial principle in civil procedure gained recognition. According to J. Gudowski, the principle of objective truth that had been applicable at that time resulted in a certain suspension of initiatives among the parties and transferring the whole responsibility for the result of the case, including the hearing of evidence, to the adjudicating authority[15].

A large amendment process to the Polish civil procedure was launched with the abovementioned taken into account. It resulted in the Act of 1st March 1996[16]. The amendment repealed Article 3 § 2 of the Code of Civil Procedure which introduced the principle of objective truth. The obligation to provide factual material and evidence was transferred once again to the parties. This, as a result, enhanced the adversarial principle. Further amendments – Act of 2nd July 2004[17] and 16th September 2011[18] – followed the same path. Finally, the legislator introduced provisions that ought to encourage parties to take effort to discover the truth and make a judgment compliant with the actual status[19].

The adversarial character of the civil proceeding results from numerous provisions, such as the following:

– Article 3 of Code of Civil Procedure – parties and participants to the proceedings ought to proceed with procedural acts during civil proceedings

[14] Resolution of Supreme Court of 27th June 1953, CPrez 195/52.

[15] J. Gudowski, *O kilku naczelnych zasadach…*, p. 1020-1021. *[On Some Fundamental Principles…]*

[16] Journal of Laws No. 45, pos. 189.

[17] Journal of Laws No. 172, pos. 1804.

[18] Journal of Laws No. 233, poz. 1381.

[19] K. Knoppek, *Zmierzch zasady prawdy obiektywnej w procesie cywilnym*, Palestra 2005, no. 1-2, p. 12-13 *[The end of objective truth principle in civil process];* P. Marciniak, *Zasada kontradyktoryjności…*, p. 105-106. *[Adversarial principle…]*

in accordance with good practice, invoke explanations to the circumstances truthfully and without withholding anything as well as produce evidence;

– Article 187 § 1 of Code of Civil Procedure – claim ought to satisfy the conditions of the pleading as well as include citation of factual circumstances that justify the claim and, when necessary, justify the court's jurisdiction;

– Article 207 § 6 of Code of Civil Procedure – court shall disregard late statements and evidence unless the party demonstrates that it did not include them in the claim, answer to the claim or in further preparatory letter without any fault on its part or that including the late statements and evidence will not cause delay in the adjudication of the case; or that other exceptional cases occur;

– Article 210 § 1 of Code of Civil Procedure – the trial shall take place after initiating the case, the parties – firstly the demandant and afterwards the defendant – shall orally put forth their demands and motions as well as invoke statements and produce evidence to support them. Each party is obliged to submit a statement regarding the claims of the opposing party for the factual circumstances (§ 2 of the provision);

– Article 217 § 2 of Code of Civil Procedure – court shall disregard late statements and evidence unless the party demonstrates that it did not present them without any fault on its part or that including the late statements and evidence will not cause delay in the adjudication of the case; or that other exceptional cases occur;

– Article 230 of Code of Civil Procedure – when the party shall not give statement to claims of the opposing party regarding the facts, the court might deem such facts as accepted with focus on the result of the whole trial;

– Article 344 § 2 of Code of Civil Procedure – court shall disregard late statements and evidence unless the party demonstrates that it did not include them in the objection to default judgment without any fault on its part or that including the late statements and evidence will not cause delay in the adjudication of the case; or that other exceptional cases occur;

– Article 381 of Code of Civil Procedure – the court of 2nd instance might disregard new facts and evidence if the party was able to present them during the proceeding held before the court of 1st instance, unless the necessity to present them did not occur previously;

– Article 493 § 1 of Code of Civil Procedure – court shall disregard late statements and evidence unless the party demonstrates that it did not include them in the allegation against order for payment without any fault on its part or that including the late statements and evidence will not cause delay in the adjudication of the case; or that other exceptional cases occur;

– Article 503 § 1 of Code of Civil Procedure – court shall disregard late statements and evidence unless the party demonstrates that it did not include them in the complaint against order for payment without any fault on its part

or that including the late statements and evidence will not cause delay in the adjudication of the case; or that other exceptional cases occur[20]

In the light of principle of material truth, court rulings ought to always base on factual and legal findings compliant with the actual circumstances. The fact whether parties invoked sufficient evidence in this matter or not is without relevance in this matter. The court is allowed to take *ex officio* actions in order to supplement all potential deficits in materials submitted by parties. This principle contradicts the principle of formal truth which indicates that the obligation to determine the factual status is based solely on material provided by parties. In such cases, the court cannot take evidence *ex officio* and, in specific circumstances, can disregard particular facts and evidence[21].

Polish literature on civil procedure underlines that the obligation to speak the truth on the ground of civil proceeding does not only reflect *fraus omnia corrumpit*, but also indicates the appeal of loyalty to the process and the prohibition of the abuse of rights in the process[22]. Furthermore, the obligation of providing true and complete statements is applicable for both factual clarifications and motions for evidence. Its scope also includes incidental proceedings[23].

The law regulations specified above, especially Article 3 of Code of Civil Procedure, results from the tendency to determine the truth during a civil proceeding. This includes the competence of court and parties along with participants and their proxies who ought to contribute to discovering of truth. Therefore, the principle of material truth cannot blight the adversarial character of the process as the burden of producing necessary evidence rests with the parties[24]. Thus, all potential negative effects of not invoking a particular evidence in appropriate time burden the party that did not fulfill such obligation. As a result, the addressee of the provision specified in Article 3 of Code of Civil Procedure is not the court but the parties. Hence, one cannot assume that the court violates the norm[25].

Therefore, if the obligation to present factual circumstances and submit motion for evidence is applicable for parties, their active approach is of utmost importance for the civil process – parties may act as the "motor engine" of the

[20] Translation of original text of provisions included in Polish Code of Civil Procedure

[21] J. Jodłowski, Z. Resich, J. Lapierre, T. Misiuk-Jodłowska, K. Weitz, *Postępowanie cywilne…*, p. 133 and next. *[Civil proceeding…]*

[22] K. Piasecki, *Nadużycie praw procesowych przez strony*, Palestra 1960, no. 11, p. 20 and otherp. *[The Abuse of Procedural Rights by the Parties]*

[23] E. Marszałkowska-Krześ, *Komentarz do art. 3 Kodeksu postępowania cywilnego*, Legalis 2017, Nb 4 and 5.*[Commentary to Article 3 of Code of Civil Procedure]*

[24] J. Bodio, *Komentarz aktualizowany do art. 3 Kodeksu postępowania cywilnego*, LEX/el. 2014, Nb 1.*[Updated commentary to Article 3 of Code of Civil Procedure]*

[25] Supreme Court in rulings: of 15th July 1999, I CKN 415/99, LEX no. 83805 and of 11th December 1998, II CKN 104/98, LEX no. 50663.

whole proceeding. After the political system changes and the resulting amendments to civil procedures, including the deletion of § 2 of Article 3 of the Code[26], it was possible to introduce an adversarial model of proceeding which postulates that material is provided by parties and participants in the proceeding[27]. To sum up, pursuant to the applicable procedural law, the burden of produce evidence rests with the parties. Parties are fully responsible for the result of the civil proceeding, especially the hearing of evidence[28].

4. Adversarial principle and the problem of taking evidence ex officio

The functioning of the adversarial principle on the grounds of applicable law cannot raise any doubts. However, from the perspective of Article 3 and Article 232 of the Code of Civil Procedure in relation to Article 6 of Civil Code, there is a problem regarding of the permissible level of court's engagement in collecting evidence material[29]. This aspect focuses around the second sentence of Article 232 which allows the court to take evidence that was not invoked by the party.

---

[26] This provision indicates the court ought to ensure complex research of all circumstances and determine the actual factual relations and legal. Court could take actions *ex offico* applicable for the case and necessary to complement material and evidence invoked by parties and participants in the proceeding.

[27] Supreme Court rulings: of 7th May 2008, II PK 307/07, LEX no. 490351 and of 4th October 2007, V CSK 188/07, LEX no. 485901; resolution SC of 7th November 2003, I CK 176/03, LEX no. 151620; SC ruling in Poznań of 29th December 2003, I ACa 1457/03, OSA 2005, z. 3, pop. 12.

[28] More: J. Lapierre, *Prawo sądu do instruowania procesu z urzędu według kodeksu postępowania cywilnego na tle prawnoporównawczym [Court's right to manage proceeding ex officio according to Code of Civil Procedure]*, [in:] *Symbolae Vitoldo Broniewicz dedicatae. Księga pamiątkowa ku czci Witolda Broniewicza*, ed. A. Marciniak, Łódź 1998, p. 195 and next *[A Commemorative Book in Honour of Professor Witold Broniewicz. Symbolae Vitoldo Broniewicz dedicatae];* A. Jakubecki, *Kontradyktoryjność a poznanie prawdy w procesie cywilnym w świetle zmian kodeksu postępowania cywilnego*, PS 1998, no 10, p. 63 and next.*[Adversarial character and the truth in civil proceeding after amendments to Code of Civil Procedure]*; K. Weitz, *System prekluzji a dopuszczenie dowodu przez sąd z urzędu*, Palestra 2008, no 1-2, o. 253 and next. *[System of preclusions an taking evidence ex officio];* M. Manowska, *Zasada prawdy materialnej w świetle nowelizacji Kodeksu postępowania cywilnego*, Prawo Spółek 1999, no 12, p. 49 and next. *[Principle of material principle after amendment of Code of Civil Procedure];* H. Pietrzkowski, *Prawo do rzetelnego procesu w świetle zmienionej procedury cywilnej*, PS 2005, no 10, p. 44 and next *[Right to reliable process after amendment to civil procedure].*

[29] A. Górski, *Dopuszczenie dowodu z urzędu a zarzucalność procesowa tej czynności sądu cywilnego*, Palestra 2001, no. 11-12, p. 43 and next. *[Taking evidence ex officio and liability of civil court for this action]* ; F. Sporek, A. Stępień-Sporek, *Możliwość dopuszczenia przez sąd dowodu z urzędu*, Gdańskie Studia Prawnicze *[Gdańsk Law Studies].* Przegląd Orzecznictwa *[Review of Ruling]* 2007, no. 2, p. 81 and otherp.; A. Jakubecki, *Glosa do wyroku SN z dnia 26 stycznia 2006 r., II CSK 108/05*, OSP 2007, z. 3, p. 190 and next. *[Gloss to SC ruling of 26th January 2006]*

In this matter, it is worth underlining the fact that the issue of adversarial principle in non-litigious proceedings constitutes a completely different topic[30], the analysis of which would exceed the substantive margin of hereby work. However, the doctrine more frequently includes the thesis of adversarial principle being applicable for non-litigious proceedings as well. As J. Misztal-Konecka asserts, and rightly so, "(…) court's responsibility during non-litigious proceedings – similarly to litigious proceedings – consists not of establishing *ex officio* complete statements of facts that are necessary for making a judgment but acting as a impartial arbiter and factor that activates participants to provide statements significant for making a judgment and produce evidence to support such statements"[31].

The problem of initiating hearing of evidence *ex officio* by court was subject to numerous resolutions of Supreme Court. As K. Knoppek asserts, rulings in this aspect differ. Nonetheless, the approach that the court does not commit any violation when it takes an evidence *ex officio* during a particular case starts to gradually dominate[32].

However, it is difficult to omit resolutions where the Supreme Court firmly indicated that the possibility to take evidence *ex officio* by the court ought to be deemed as a circumstance justified by special conditions. Among many such theses, it is worth underlining:

– "possibility to take evidence not invoked by the party does not indicate that the court is obliged to supplement the inactivity of party with its own action.

---

[30] See J. Gudowski, *O kilku naczelnych zasadach…*, p. 1029 *[On Some Fundamental Principles…]*; W. Siedlecki, *Zasada kontradyktoryjności (sporności)…*, p. 69 and next.*[Adversarial principle…];* same, *Zasady wymiaru sprawiedliwości…*, p. 46 and next *[Principles of justice system…]*.; K. Korzan, *Postępowanie nieprocesowe*, Warsaw 1997, p. 63 *[Non-litigious proceeding];* J. Krajewski, *Postępowanie nieprocesowe*, Toruń 1973, p. 20; E. Gapska, J. Studzińska, *Postępowanie nieprocesowe*, Warsaw 2015, p. 72 *[Non-litigious proceeding]*; A. Miączyński, *Skuteczność orzeczeń w postępowaniu cywilnym*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze 1974, no. 67, p. 41 and next *[The effectiveness of rulings in civil proceedings];* K. Markiewicz, *Zasady orzekania w postępowaniu nieprocesowym*, Warsaw 2013, p. 299 *[Principles of adjudication in non-litigious proceeding];* ruling of Supreme Court of 12th May 2011, III CSK 238/10, LEX no. 964473.

[31] J. Misztal-Konecka, *O obowiązywaniu zasady kontradyktoryjności w postępowaniu nieprocesowym: przyczynek do dyskusji*, Zeszyty Prawnicze 2016, no. 6.3, p. 159 *[Suitability of adversarial principle in non-litigious proceeding: discussion*]. Similarly: Z. Resich, *Istota procesu cywilnego*, Warsaw 1985, p. 141 and next *[The shape of civil process];* A. Świderska, *Zasada kontradyktoryjności w postępowaniu nieprocesowym (na gruncie kodeksu postępowania cywilnego)*, Prawo. Administracja. Zarządzanie 1992, no. 2, p. 410 and next *[Adversarial principle in non-litigious proceeding (on the ground of civil proceeding)];* M. Sawczuk, *Problem aktywności stron ('vigilantibus iura scripta sunt') w postępowaniu cywilnym*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Wynalazczości i Ochrony Własności Intelektualnej 1974, no. 1, p. 120. *[The problem of activity of parties ('vigilantibus iura scripta sunt') during civil proceeding]*

[32] K. Knoppek, *Problem dopuszczania przez sąd dowodów z urzędu w postępowaniu cywilnym*, RPEiS 2007, z. 3, p. 6. *[The problem of taking evidence ex officio by court in civil proceeding]*

The court may execute its right to launch an evidence initiative only in particular, special process cases (Article 232 of the Code.)"[33];

– "since 1st July 1996, due to amendment of Article 232 of Code and the deletion of § 2 of Article 3 of the Code, the court's responsibility for the result of evidentiary proceeding was repealed"[34];

– "the parties, not the court, are responsible for assessing whether the facts significant for the decision in its favor were already invoked or not. The maintained Article 299 of Code of Civil Procedure does not indicate any obligation to take evidence from hearing based on principles different than other evidence. The possibility to take such evidence also *ex officio* (second sentence of Article 232 of Code of Civil Procedure) ought to be used only in exceptional circumstances. Court's *ex officio* actions that supplement one of the parties might be viewed as the violation of the right to impartial court and the resulting principle of equal rights of parties (Article 32 paragraph 1 and Article 45 paragraph 1 of the Constitution of Poland)"[35];

– "the court cannot execute its right to take evidence *ex officio* specified in Article 232 of Code of Civil Procedure freely. It can do so solely in exceptional cases that require protection of public interest as well as when there is suspicion that parties conduct a fictitious civil lawsuit or aim at circumventing the law; it is also applicable in cases when a party acting without a professional proxy which, despite necessary instruction from court received pursuant to Article 5 Code of Civil Procedure, cannot produce evidence in order to support its statements"[36]

For some time now it has been possible to observe permission to allow courts to take evidence *ex officio* without significant limitations. As an example of this, it is worth mentioning the following theses of Supreme Court:

– "the adversarial principle of civil procedure (Article 232 of Code of Civil Procedure) indicates that courts evaluate the reliability and power of evidence invoked by the parties at their own discretion. This asserts that courts can take evidence not invoked by the party when the evidence produced during the case is insufficient to make a decision"[37];

– "taking evidence *ex officio* by court cannot be deemed as a violation of the principle of impartial court and equality of the parties"[38];

– "under particularly justified cases, appliance of the second sentence of Article 232 of Code of Civil Procedure by court can be viewed as an obligation

[33] The resolution of Supreme Court of 5th November 1997, III CKN 244/97, LEX no. 31759.
[34] The resolution of Supreme Court of 7th October 1998, II UKN 244/98, LEX no. 44488.
[35] The resolution of Supreme Court of 12th December 2000, V CKN 175/00, LEX no. 49418.
[36] The resolution of Supreme Court of 20th December 2005, III CK 121/05, LEX no. 188116.
[37] The resolution of Supreme Court of 10th December 1997, II UKN 394/97, LEX no. 31994.
[38] The resolution of Supreme Court of 13th February 2004, IV CK 24/03, LEX no. 64225.

of court while the violation of such obligation by court of second instance can pose the base for cassation complaint"[39].

The abovementioned indicates that the stand of Supreme Court's interpretation of the second sentence of Article 232 of Code of Civil Procedure is far from unanimous. The dualism of approaches is summarized by another court ruling according to which "Article 232 of the Code contains two provisions of procedural law: the first sentence is dedicated to parties and imposes the obligation to produce evidence in order to underline facts which result in legal effects. This norm cannot be violated by court. The second sentence is addressed to court and indicates that court may take evidence not specified by party. The second norm can be violated by court when it takes evidence not invoked by the party *ex officio* and thus, violates the adversarial principle specified in Article 3 of the Code of Civil Procedure (…), and when it omits to take evidence not invoked by the parties despite the exceptional conditions that allow to do so (…)"[40].

5. Some remarks about the Article 232 of Code of Civil Procedure

The aspect of taking evidence *ex officio* by courts of 2nd instance is not uniformly viewed in the procedural law field. Doctrine's representatives can be divided into two groups. The first (rigorist) excludes the possibility to take evidence *ex officio* during appeal proceedings, while the second (liberal) deems such action as lawfully permissible.

According to K. Kołakowski, a representative of the first group, attempts to justify the possibility to take evidence by court of appeals *ex officio* with the provisions of either the second sentence of Article 232 or Article 241 of Code of Civil Procedure would imply disregard of the legal value of Article 381 of that Code which aims at concentrating evidence material before the court of 1st instance. This would develop a risk of the court of appeals being convinced by parties to take evidence *ex officio* that did not invoke sufficient material during proceedings held before court of 1st instance in order to deliver an equitable judgment. Thus, this might result in assigning more inquisitional rights to court of appeals than to the court of 1st instance.[41].

[39] The resolution of Supreme Court of 9th March 2016, II CSK 248/15, LEX no. 1446225.

[40] This is the justification of Supreme Court of 2nd July 2015, V CSK 624/14, LEX no 1303705. See SC rulings: of 12th December 2000 V CSK 175/00, OSP 2001, no. 7-8, pop. 116of 5th February 1997, I CKU 81/96, Legalis and of 4th January 2007 V CSK 377/06, OSP 2008, no. 1, pop. 8.

[41] K. Kołakowski, *Dowodzenie w procesie cywilnym*, Warsaw 2000, p. 123 and next. [Hearing Turing civil process *[Hearing during civil process]*

According to A. Jaroch, taking evidence *ex officio* by court of appeals comprises a threat to the constitutional rights of equality of citizens before the law and citizen's right to impartial and independent court[42].

The abovementioned is also confirmed by K. Knoppek who asserts that "taking evidence *ex officio* ought to be limited to cases that were launched by the court *ex officio*. This includes cases specified in Act and dealt during non-litigious proceedings. Taking evidence *ex officio* is also possible when the specific provision requires from the court to include specific decision within the ruling, for example a decision regarding alimony for parties' minor children as well as in cases regarding parental responsibility during a divorce and separation cases. It is also possible in cases where the court ought to determine whether the dispositive action of the parties are *in fraudem legis* as well as whether the whole process in conducted fictively in order to circumvent the law. Similarly, courts will take evidence *ex officio* during cases where courts adjudicate about the factual and legal circumstance of child, if this would be required by the provision of protection of children that results from family law. Nonetheless, all this comprise exceptional cases and the fundamental principle postulates that evidence is taken only upon party's request"[43].

While justifying his stand, the Author refers to observation from W. Broniewicz who asserts that taking evidence by court *ex officio* will be beneficial for one party and less-favorable for the other. Therefore, by taking a specific evidence *ex officio*, the court might unwillingly help one of the parties which uses such activity of court. Such circumstance might prompt the other party to question the court's impartiality[44].

While summarizing his considerations K. Knoppek asserts that "(…) Article 391 § 1 of Code of Civil Procedure is applicable in case of second instance proceedings (…). The specific provision regarding taking evidence *ex officio* can be found in the chapter on appeals, especially Article 381 of Code of Civil Procedure which regulates the possibility of taking evidence by courts of second instance. Therefore, the provision constitutes *lex specialis* in relation to the second sentence of Article 232 of Code of Civil Procedure. If the complainant cannot successfully request to take evidence before court of 2nd instance due to Article 381 while the court of 2nd instance can take evidence *ex officio*, the

[42] A. Jarocha, *Postępowanie dowodowe w cywilnym postępowaniu apelacyjnym[Hearing of evidence in civil appeals proceeding [at:] law against challenges of modernity]*, [in:] *Prawo wobec wyzwań współczesności*, ed. P. Wiliński, t. II, Poznań 2005, p. 231 and next. *[Law against the challenges of modernity]*

[43] K. Knoppek, *Problem dopuszczania…*, p. 9. *[Problem of taking…]*

[44] W. Broniewicz, *Glosa do wyroku SN z dnia 12 grudnia 2000 r., V CKN 175/00*, OSP 2001, z. 7-8, p. 398. *[Gloss to ruling of Supreme Court of 12th December 200]*

complainant might use this situation and circumvent prohibitions from Article 381 by requesting the court to take evidence *ex officio*.[45].

Literature includes an abundance of statements from the liberal group regarding the possibility to take evidence *ex officio* by courts of appeals.

According to T. Ereciński, the court holds the right to take evidence *ex officio* during appeals proceedings even if the specific evidence was not invoked by the parties[46]. A. Górski states the similar. He asserts that the court of 2nd instance can supplement, and even repeat evidence *ex officio*, as evidence limitations specified in Article 381 of Code of Civil Procedure are binding for the parties and not for the court of appeal[47].

The latest resolution of the Supreme Court indicates a liberal approach towards the issue. The Supreme Court verdict of 8th December 2016, II UK 484/15, states the following: "(…) taking evidence *ex officio* constitutes the right of courts of second instance (the second sentence of Code of Civil Procedure in relation to Article 391 § 1 of that Code) and executing such rights cannot be deemed as a violation. However, the evidence preclusion mentioned in Article 381 is addressed to parties and not to the court"[48].

6. Final comments and conclusions

Provision of Article 381 of the Code of Civil Procedure gives rise to numerous and serious doubts regarding the practice of courts of appeals. Lack of uniform appliance of the abovementioned regulation results from different assumptions that courts adhere to while passing particular judgments. Such differences often constitute methods of perceiving the court of 2nd instance in an either more control manner or more substantive manner – in accordance with principle *cum beneficio novorum*.

This results in two completely different approaches towards taking evidence *ex officio* during appeals proceedings. According to the first one, such actions of court of second instance ought to be impermissible[49]. According to the second one, such action is lawful as Article 381 of Code of Civil Procedure is

[45] K. Knoppek, *Problem dopuszczania…*, p. 9-10. *[Problem of taking…]*

[46] T. Ereciński, *Apelacja i kasacja w procesie cywilnym*, Warsaw1996, p. 63.*[Appellation and cessation in civil process]*

[47] A. Górski, *Uwagi na marginesie książki Krzysztofa Kołakowskiego „Dowodzenie w procesie cywilnym"*, PS 2000, no. 11, p. 148 and next. *[Comments to Krzysztof Kołakowski's book "Hearing during civil process"]*

[48] LEX no 2188794.

[49] See Supreme Court rulings SN: of 10th February 2000, II UKN 391/99, LEX no. 1218245, of 12th December 2000, V CKN 160/00, LEX no. 536986 and of 25th May 2012, I CSK 380/11, LEX no.1254616; resolution of Supreme Court of 19th February 2002, IV CK 3/02, LEX no. 564819; ruling

applicable for parties and not the competences of court which result from the second sentence of Article 232 of that Code[50].

Lack of uniform approach regarding the possibility of courts of 2nd instance to take evidence *ex officio* and making judgment on this base has significant practical values. It constitutes a collision of two primary procedural principles – principle of material truth and principle of concentration of procedural material. The conducted analysis indicates that the previous practices of courts of appeals adhered to the first principle. However, the newer rulings recognize the tendency of preventing the excessive length of civil proceeding frequently at the cost of settlement's compliance with the actual status. In the doctrine, such practice has been titled "court truth". Its root consists of evidence material invoked by parties in accordance with procedural rules and therefore, collected during the proceeding held before the court of 1st instance[51].

In conclusion to the conducted research, it is worth to edit the appeal *de lege ferenda*. Taking into account the strong need from civil courts (including courts of appeals) to make decisions compliant with the actual status, I consider giving courts of 2nd instance the right to take evidence *ex officio* as appropriate. Nonetheless, due to the abovementioned reason, such rights ought to be deemed as an exception from the adversarial principle.

In order to definitely settle the doubts regarding the possibility or impossibility of applying the second sentence of Article 232 of Code of Civil Procedure during appeals proceedings, it is worth to consider complementing Article 381 of that Code with a second sentence as follows: "Provision of the second sentence of Article 232 shall be applicable accordingly". Such disposition of Article 381 would directly confirm the right (in a way exceptional) of courts of 2nd instance to take evidence *ex officio*.

BIBLIOGRAFIA:

Orzecznictwo:

Resolution of Supreme Court of 5th February 1997, I CKU 81/96, Legalis
Resolution of Court of Appeals in Białystok of 12th September 2000, I PKN 28/00, LEX no. 47170

---

of Court of Appeals in Białystok of 29th October 2013, I ACa 186/12, LEX no. 1388762 and of 20th May 2014, III AUa 1912/13, LEX no. 1473665.

[50] Compare verdicts of Supreme Court: of 12th September 2000, I PKN 28/00, LEX no. 47170, of 20th February 2004., I CK 213/03, LEX no. 520016, of 30th June 2004, IV CK 509/03, LEX no. 585869, of 30th September 2008, II CSK 167/08, LEX no. 465950, of 11th February 2011, II UK 273/10, LEX no. 817530 and of 10th May 2012, II PK 215/11, LEX no. 1313658.

[51] Similarly A. Patryk, T. Patryk, *Skuteczność zgłoszenia nowych faktów i dowodów w postępowaniu apelacyjnym*, Legalis no. 200681. *[Effectiveness of taking new facts and evidences during appeals proceeding]*

Resolution of Court of Appeals in Białystok of 30th September 2008, II CSK 167/08, LEX no. 465950
Justification of Supreme Court ruling of 28th February 1935, III C 1217/34, Legalis
Resolution of Supreme Court of 27th June 1953, CPrez 195/52, Legalis
Resolution of Supreme Court of 5th November 1997, III CKN 244/97, LEX no. 31759
Resolution of Supreme Court of 10th December 1997, II UKN 394/97, LEX no. 31994
Resolution of Supreme Court of 7th October 1998, II UKN 244/98, LEX no. 44488
Resolution of Supreme Court of 11th December 1998, II CKN 104/98, LEX no. 50663
Resolution of Supreme Court of 15th July 1999, I CKN 415/99, LEX no. 83805
Resolution of Supreme Court of 10th February 2000, II UKN 391/99, LEX no. 1218245
Resolution of Supreme Court of 12th December 2000 V CSK 175/00, OSP 2001, no. 7-8, pop. 116
Resolution of Supreme Court of 12th December 2000, V CKN 160/00, LEX no. 536986
Resolution of Supreme Court of 12th December 2000, V CKN 175/00, LEX no. 49418
Resolution of Supreme Court of 7th November 2003, I CK 176/03, LEX no. 151620
Resolution of Court of Appeals in Poznań of 29th December 2003, I ACa 1457/03, OSA 2005, z. 3, pop. 12
Resolution of Court of Appeals in Białystok of 20th February 2004., I CK 213/03, LEX no. 520016
Resolution of Court of Appeals in Białystok of 30th June 2004, IV CK 509/03, LEX no. 585869
Resolution of Supreme Court of 20th December 2005, III CK 121/05, LEX no. 188116
Resolution of Supreme Court of 4th January 2007 V CSK 377/06, OSP 2008, no. 1, pop. 8
Justification of Supreme Court ruling 4th October 2007, V CSK 188/07, LEX no. 485901
Justification of Supreme Court ruling of 7th May 2008, II PK 307/07, LEX no. 490351
Resolution of Court of Appeals in Białystok of 11th February 2011, II UK 273/10, LEX no. 817530
Resolution of Supreme Court of 12th May 2011, III CSK 238/10, LEX no. 964473
Resolution of Court of Appeals in Białystok of 10th May 2012, II PK 215/11, LEX no. 1313658
Resolution of Supreme Court of 25th May 2012, I CSK 380/11, LEX no.1254616
Resolution of Court of Appeals in Białystok of 29th October 2013, I ACa 186/12, LEX no. 1388762
Resolution of Court of Appeals in Białystok of 20th May 2014, III AUa 1912/13, LEX no. 1473665
Justification of Supreme Court of 2nd July 2015, V CSK 624/14, LEX no 1303705
Resolution of Supreme Court of 9th March 2016, II CSK 248/15, LEX no. 1446225
Resolution of Supreme Court of 19th February 2002, IV CK 3/02, LEX no. 564819
Resolution of Supreme Court of 13th February 2004, IV CK 24/03, LEX no. 64225

Literatura:

Bodio J., *Komentarz aktualizowany do art. 3 Kodeksu postępowania cywilnego*, LEX/el. 2014 *[Updated commentary to Article 3 of Code of Civil Procedure]*
Broniewicz W., *Glosa do wyroku SN z dnia 12 grudnia 2000 r., V CKN 175/00*, OSP 2001, z. 7-8 *[Gloss to ruling of Supreme Court of 12th December 200]*
Broniewicz W., *Zasada kontradyktoryjności procesu cywilnego w poglądach nauki polskiej (1880-1980)*, *[The Principle of Adversarial Civil Proceedings in the Views of Polish Legal Doctrine (1880-1980)]*, [in:] *Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha*, ed. M. Jędrzejewska, T. Ereciński, Warsaw 1985 *[Studies on Civil Procedural Law. Commemorative Book in Honour of Zbigniew Resich]*
Dajczak W., Giaro T., Longchamps de Bérier F., *Prawo rzymskie. U podstaw prawa prywatnego*, Warsaw 2014 *[Roman law. Basics of private law]*
Dolecki H., *Ciężar dowodu w polskim procesie cywilnym*, Warsaw 1998 *[The burden of evidence in Polish civil process]*
Ereciński T., *Apelacja i kasacja w procesie cywilnym*, Warsaw1996 *[Appellation and cessation in civil process]*

Gapska E., Studzińska J. , *Postępowanie nieprocesowe*, Warsaw 2015 *[Non-litigious proceeding]*
Górski A., *Dopuszczenie dowodu z urzędu a zarzucalność procesowa tej czynności sądu cywilnego*, Palestra 2001, no. 11-12 *[Taking evidence ex officio and liability of civil court for this action]*
Górski A., *Uwagi na marginesie książki Krzysztofa Kołakowskiego „Dowodzenie w procesie cywilnym"*, PS 2000, no. 11 *[Comments to Krzysztof Kołakowski's book "Hearing during civil process"]*
Gudowski J., *O kilku naczelnych zasadach procesu cywilnego – wczoraj, dziś, jutro*, *[On Some Fundamental Principles of Civil Proceedings – Yesterday, Today and Tomorrow]* [in:] *Prawo prywatne czasu przemian. Księga pamiątkowa dedykowana profesorowi Stanisławowi Sołtysińskiemu*, ed. A. Nowicka, Poznań 2005 *[Private Law in a Period of Changes. A Commemorative Book in Honour of Professor Stanisław Sołtysiński]*
Jakubecki A., *Kontradyktoryjność a poznanie prawdy w procesie cywilnym w świetle zmian kodeksu postępowania cywilnego*, PS 1998, no 10 *[Adversarial character and the truth in civil proceeding after amendments to Code of Civil Procedure]*
Jakubecki A., *Naczelne zasady postępowania cywilnego w świetle nowelizacji kodeksu postępowania cywilnego*, [in:] *Czterdziestolecie kodeksu postępowania cywilnego. Zjazd katedr postępowania cywilnego w Zakopanem*, Kraków 2006 *[Forty years of Code of Civil Procedure. Rally of departments of civil proceeding in Zakopane]*
Jakubecki A., *Glosa do wyroku SN z dnia 26 stycznia 2006 r., II CSK 108/05*, OSP 2007, z. 3 *[Gloss to SC ruling of 26th January 2006]*
Jarocha A., *Postępowanie dowodowe w cywilnym postępowaniu apelacyjnym [Hearing of evidence in civil appeals proceeding [at:] law against challenges of modernity]*, [in:] *Prawo wobec wyzwań współczesności*, ed. P. Wiliński, t. II, Poznań 2005 *[Law against the challenges of modernity]*
Jodłowski J., *Zasady naczelne socjalistycznego postępowania cywilnego [The Fundamental Principles of the Socialist Civil Proceedings]*, [in:] *Wstęp do systemu prawa procesowego cywilnego*, ed. J. Jodłowski, Wrocław-Warsaw 1974 *[Introduction to the System of Civil Procedural Law],*
Jodłowski J., Resich Z., Lapierre J., Misiuk-Jodłowska T., Weitz K., *Postępowanie cywilne*, Warsaw 2010 *[Civil proceeding]*
K. Markiewicz, *Zasady orzekania w postępowaniu nieprocesowym*, Warsaw 2013 *[Principles of adjudication in non-litigious proceeding]*
Knoppek K., *Problem dopuszczania przez sąd dowodów z urzędu w postępowaniu cywilnym*, RPEiS 2007, z. 3 *[The problem of taking evidence ex officio by court in civil proceeding]*
Knoppek K., *Zmierzch zasady prawdy obiektywnej w procesie cywilnym*, Palestra 2005, no. 1-2 *[The end of objective truth principle in civil process]*
Kołakowski K., *Dowodzenie w procesie cywilnym*, Warsaw 2000 *[Hearing during civil process]*
Korzan K., *Postępowanie nieprocesowe*, Warsaw 1997 *[Non-litigious proceeding]*
Krajewski J., *Postępowanie nieprocesowe*, Toruń 1973 *[Non-litigious proceeding]*
Kupiszewski H., *Prawo rzymskie a współczesność*, Warsaw 1988 *[Roman law and modernity]*
Lapierre J., *Prawo sądu do instruowania procesu z urzędu według kodeksu postępowania cywilnego na tle prawnoporównawczym [Court's right to manage proceeding ex officio according to Code of Civil Procedure]*, [in:] *Symbolae Vitoldo Broniewicz dedicatae. Księga pamiątkowa ku czci Witolda Broniewicza*, ed. A. Marciniak, Łódź 1998 *[A Commemorative Book in Honour of Professor Witold Broniewicz. Symbolae Vitoldo Broniewicz dedicatae]*
Mądrzak H., *O pojmowaniu naczelnych zasad postępowania cywilnego*, [in:] *Proces i prawo. Rozprawy prawnicze*, ed. E. Łętowska, Wrocław-Warsaw 1989 *[Comprehending primary principles of civil proceeding]*
Manowska M., *Zasada prawdy materialnej w świetle nowelizacji Kodeksu postępowania cywilnego*, Prawo Spółek 1999, no 12 *[Principle of material principle after amendment of Code of Civil Procedure]*

Marciniak P., *Zasada kontradyktoryjności a ewolucja i współczesny kształt postępowania cywilnego – zarys problematyki*, Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza 2013, no 1 *[Adversarial principle and modern shape of civil proceeding –overview of problem]*

Marszałkowska-Krześ E., *Komentarz do art. 3 Kodeksu postępowania cywilnego*, Legalis 2017 *[Commentary to Article 3 of Code of Civil Procedure]*

Miączyński A., *Skuteczność orzeczeń w postępowaniu cywilnym*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze 1974, no. 67 *[The effectiveness of rulings in civil proceedings]*

Misztal-Konecka J., *O obowiązywaniu zasady kontradyktoryjności w postępowaniu nieprocesowym: przyczynek do dyskusji*, Zeszyty Prawnicze 2016, no. 6.3 *[Suitability of adversarial principle in non-litigious proceeding: discussion*]

Patryk A., Patryk T., *Skuteczność zgłoszenia nowych faktów i dowodów w postępowaniu apelacyjnym*, Legalis no. 200681 *[Effectiveness of taking new facts and evidences during appeals proceeding]*

Piasecki K., *Postępowanie sporne rozpoznawcze w sprawach cywilnych*, Warsaw 2011 *[Litigation in civil cases]*

Piasecki K., *Nadużycie praw procesowych przez strony*, Palestra 1960, no. 11 *[The Abuse of Procedural Rights by the Parties]*

Pietrzkowski H., *Prawo do rzetelnego procesu w świetle zmienionej procedury cywilnej*, PS 2005, no 10 *[Right to reliable process after amendment to civil procedure].*

Pogonowski P., *Znaczenie rzymskich paremii procesowych dla współczesnej procedury cywilnej*, [in:] *Starożytne kodyfikacje prawa*, ed. A. Dębiński, Lublin 2000 *[Value of Roman process maxims for modern civil procedure]*

Resich Z., *Istota procesu cywilnego*, Warsaw 1985 *[The shape of civil process]*

Resich Z., *Zasada dyspozycyjności i kontradyktoryjności w procesie cywilnym PRL*, PiP 1957, z. 7-8 *[The Principle of a Free Exercise by the Parties of Their Rights and Adversarial Principle in Civil Proceedings of People's Republic of Poland]*

Sawczuk M., *Problem aktywności stron ('vigilantibus iura scripta sunt') w postępowaniu cywilnym*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Wynalazczości i Ochrony Własności Intelektualnej 1974, no. 1 *[The problem of activity of parties ('vigilantibus iura scripta sunt') during civil proceeding]*

Siedlecki W., *Zasada kontradyktoryjna i zasada śledcza w polskim procesie cywilnym*, PiP 1953, z. 2 *[Adversarial principle and inquiry principle in Polish civil process]*

Siedlecki W., *Zasada kontradyktoryjności (sporności) czy zasada współdziałania podmiotów postępowania cywilnego?*, PiP 1975, z. 5, *[The Adversarial Principle or the Principle of Cooperation Between the Participants in Civil Proceedings]*

Siedlecki W., *Zasady wymiaru sprawiedliwości i naczelne zasady procesu cywilnego w świetle orzecznictwa Sądu Najwyższego*, Zeszyty Naukowe Instytutu Badania Prawa Sądowego 1978, no. 10 *[The Fundamental Principles of the Civil Proceedings in the Light of rulings of Supreme Court]*

Siedlecki W., *Zasada kontradyktoryjności w polskim procesie cywilnym*, PiP 1953, z. 2 *[Adversarial principle in Polish civil process]*

Sporek F., Stępień-Sporek A., *Możliwość dopuszczenia przez sąd dowodu z urzędu*, Gdańskie Studia Prawnicze *[Gdańsk Law Studies].* Przegląd Orzecznictwa *[Review of Ruling]* 2007, no. 2

Świderska A., *Zasada kontradyktoryjności w postępowaniu nieprocesowym (na gruncie kodeksu postępowania cywilnego)*, Prawo. Administracja. Zarządzanie 1992, no. 2 *[Adversarial principle in non-litigious proceeding (on the ground of civil proceeding)]*

Waligórski M., *Polskie prawo procesowe w świetle zasady kontradyktoryjności*, SC 1963 *[Polish Law of Civil Procedure. Function and Structure of the Proceedings]*

Weitz K., *System prekluzji a dopuszczenie dowodu przez sąd z urzędu*, Palestra 2008, no 1-2 *[System of preclusions an taking evidence ex officio]*

Adversarial character of civil appeal proceedings – selected issues

Summary:

Among the particular branches of law, one can distinguish the so-called primary principles of law. They mirror the basic assumptions of a specific area of law. Adversarial principle is regarded as one of such principles within the field of civil proceeding. In the most general approach, the principle indicates the burden that rests on the parties – presenting factual situation and invoking evidence to support it.

Under this rule, the cognition of civil court is limited solely to assessing the evidence introduced by parties and providing a suitable decision on this basis. Introduction of the adversarial principle ought to significantly contribute to creating a quick and efficient mechanism for bringing to justice based on evidence invoked by the parties. Winning the court case ought to constitute a reward for appropriate fulfillment of one's law-imposed obligation to present rationale.

Keywords: principles of law, adversarial principle, civil proceedings, appeal proceedings.

Kontradyktoryjność postępowania apelacyjnego – wybrane zagadnienia

Streszczenie:

Na gruncie poszczególnych gałęzi prawa wyróżnia się tzw. naczelne zasady prawa, będące odzwierciedleniem podstawowych założeń danej dziedziny prawa. Do takich zasad na gruncie postępowania cywilnego, zaliczana jest zasada kontradyktoryjności. W najbardziej ogólnym ujęciu oznacza ona obciążenie stron procesowych ciężarem przytaczania okoliczności faktycznych i zgłaszania dowodów na ich poparcie.

Kognicja sądu cywilnego, w myśl tej zasady, sprowadza się jedynie do oceny zaoferowanego przez strony materiału dowodowego i wydania na tej podstawie stosownego rozstrzygnięcia. Wprowadzenie zasady kontradyktoryjności powinno w sposób odczuwalny przyczynić się do stworzenia szybkiego i efektywnego mechanizmu służącego do wymierzania sprawiedliwości na podstawie materiału dowodowego zaoferowanego przez strony. Nagrodą za należyte wywiązanie się z nałożonego ustawą obowiązku wykazania swoich racji, winno być wygranie procesu.

Słowa kluczowe: zasady prawa, zasada kontradyktoryjności, proces cywilny, postępowanie odwoławcze.