Europejski Przegląd Prawa i Stosunków Międzynarodowych
Europejska Wyższa Szkoła Prawa i Administracji w Warszawie

nr 1/2025/73

Krzysztof Grzesiowski*

Sententia Non Existens: Another voice in the debate on non-existent judgments

[*Sententia non existens*, czyli kolejny głos w dyskusji dotyczącej wyroków nieistniejących]

Abstract

A judicial judgment constitutes a highly formalized procedural act, where compliance with statutory requirements ensures its correctness, i.e., its validity. Procedural violations in the issuance process, along with substantive or formal errors within the judgment, may serve as grounds for appeal or rectification. In certain cases, defects may be so severe that the judgment cannot be considered to exist at all (*sententia non existens*). The issue of non-existent judgments has long been a source of substantial debate and controversy within legal doctrine and jurisprudence, recently reignited, with heightened urgency, due to the CJEU's case law. Hence, there arises a need to contribute to this crucial and complex discourse.

Keywords: non-existent judgment, *sententia non existens*, nullity of proceedings, validity of judgment.

Introduction

A judgment[1] as a legal and procedural act is a highly formalised action regulated in detail by the provisions of the Code of Civil Procedure.[2] The observance of all statutory requirements determines the correctness, i.e. non-defectiveness, of this act. Defects in the procedure of issuing a judgment, as well as mistakes in the content or form of a judgment may be the basis for its

* **Krzysztof Grzesiowski** – PhD, Assistant Professor at the Faculty of Law and Administration, University of Szczecin (affiliation); https://orcid.org/0000-0003-3287-7790; krzysztof.grzesiowski@usz.edu.pl / dr nauk prawnych, adiunkt na Wydziale Prawa i Administracji, Uniwersytet Szczeciński (afiliacja).

[1] For more on judgments see K. Grzesiowski [in:] System postępowania cywilnego. Orzeczenia sądowe, vol. 4, A. Góra-Błaszczykowska, P. Osowy (eds), Warszawa 2025, chapter 3.1.

[2] Dz.U. z 2024 r., poz. 1568 ze zm.

appeal or rectification.[3] In specific situations, the defects may be so serious that there can be no judgment at all (*sententia non existens*). The non-existence of a judgment is the most serious 'sanction'[4] resulting from the violation of the rules constituting this conventional action (the so-called rules of conventionalization indicating the constitutive elements for a given conventional action, the observance of which is a necessary condition for the attribution of the sense of performance of a particular conventional action to certain actions).[5] Indeed, a non-existent judgment has no legal effect because – in the procedural sense – it does not exist. At the outset of the considerations, it should be emphasised that the provisions of the Code of Civil Procedure do not use the concept (sanction) of a non-existent judgment, and the concept is entirely an output of the science of procedural law and the jurisprudence of the Supreme Court. The lack of statutory regulation has contributed to the emergence of many, sometimes contradictory views and has made it difficult to build a coherent (universally accepted) concept, which has a negative impact on judicial practice and poses a significant threat to the legal security of citizens, the stability of the legal system and the permanence of final judgments.[6] Despite many years of development of the Polish procedural science, there is no clear concept of the status of non-existent judgments and there is still a serious problem with determining the scope of this concept, as well as with determining the proper procedure for challenging judgments affected by this defect (sanction). It is even pointed out in the doctrine[7] of procedural law that the institution of *sententia non existens* reflects a construction rejected in the process of historical transformations of procedural law. The evolution of the institution of nullity *ex lege* towards the recognition of the invalidity of proceedings as a defect justifying the challenge to a judgment, constitutes

[3] The provisions of the Code of Civil Procedure do not provide for the invalidity of judgments, but only for the invalidity of proceedings (Article 379 of the Code of Civil Procedure) and only in this sense, as a certain 'mental shortcut', it is possible to speak of an 'invalid judgment' as a judgment issued in proceedings affected by invalidity (Resolution of the Supreme Court of 26.09.2000, III CZP 29/00, Legalis). For the most extensive recent discussion of the invalidity of civil proceedings, see T. Zembrzuski, Nieważność postępowania w procesie cywilnym, Warszawa 2017.

[4] According to H. L. A. Hart's conception of *secondary rules* (H. L. A. Hart, Pojęcie prawa, transl. J. Woleński, Warszawa 1998, pp. 54–57), the 'announcement of nullity' does not function as an ailment sanction as in the case of *primary* rules, but is part of the secondary rules ('sanction of nullity' even determines the existence of secondary rules).

[5] S. Czepita, *Zagadnienie orzeczeń nieistniejących w postępowaniu cywilnym w świetle koncepcji czynności konwencjonalnych* [in:] Konwencjonalne i formalne aspekty prawa, Studia i materiały, S. Czepita (ed.), Szczecin 2006, 629, p. 139; S. Czepita, G. Szacoń, *Teoretyczne i praktyczny aspekty zagadnienia tak zwanych wyroków nieistniejących w procesie cywilnym* [in:] Proces cywilny. Nauka–kodyfikacja–praktyka. Księga jubileuszowa dedykowana Profesorowi Feliksowi Zedlerowi, P. Grzegorczyk, K. Knoppek, M. Walasik (eds), Warszawa 2012, p. 99.

[6] It is pointed out in journalism that the concept of non-existent verdicts may lead to 'legal anarchy' (see T. Pietryga, 'Dariusz Barski i nieuznany wyrok. demokracja walcząca przeszła od słów do czynów', „Rzeczpospolita" 2024, Sept. 29, https://www.rp.pl/opinie-prawne/art41212301-tomasz-pietryga-dariusz-barski-i-nieuznany-wyrok-demokracja-walczaca-przeszla-od-slow-do-czynow [accessed: 01.11.2024]).

[7] T. Zembrzuski, Nieważność..., p. 201.

a negation of the construction of a non-existent judgment.[8] The issue of non-existent judgements has been causing numerous disputes and controversies in the doctrine[9] and judicature[10] for years. Recently, they have been revived

[8] *Ibid*.

[9] See in particular: B. Bladowski, *Orzeczenia nieistniejące w cywilnym postępowaniu odwoławczym*, NP 1991, 1–3, pp. 79–85; Ł. Błaszczak, *Orzeczenia nieistniejące* (sententia non existens) *w sądowym postępowaniu cywilnym* [in:] Wokół problematyki orzeczeń, Ł. Błaszczak (ed.), Toruń 2007, p. 7; Ł. Błaszczak, *Wybrane przypadki orzeczeń nieistniejących* (sententia non existens) *w procesie cywilnym na przykładzie orzecznictwa Sądu Najwyższego*, „Radca Prawny" 2012, 130, suppl., p. 2; W. Broniewicz, Postępowanie cywilne w zarysie, Warszawa 1996; W. Broniewicz, A Marciniak, I. Kunicki, Postępowanie cywilne w zarysie, Warszawa 2016; S. Czepita, *Zagadnienie orzeczeń nieistniejących w postępowaniu cywilnym w świetle koncepcji czynności konwencjonalnych* [in:] Konwencjonalne i formalne aspekty prawa, S. Czepita (ed.), Studia i materiały, Szczecin 2006, 629, p. 139; S. Czepita, G. Szacoń, *Teoretyczne i praktyczne aspekty zagadnienia tak zwanych wyroków nieistniejących w procesie cywilnym* [in:] Proces cywilny. Nauka–kodyfikacja–praktyka. Księga jubileuszowa dedykowana Profesorowi Feliksowi Zedlerowi, P. Grzegorczyk, K. Knoppek, M. Walasik (eds), Warszawa 2012, p. 99; E. Gapska, *Ewolucja koncepcji orzeczeń prawnie nieistniejących w postępowaniu cywilnym* [in:] Ewolucja polskiego postępowania cywilnego wobec przemian politycznych, społecznych i gospodarczych. Materiały konferencyjne Ogólnopolskiego Zjazdu Katedr Postępowania Cywilnego, Szczecin–Niechorze, 28–30 Sept. 2007, H. Dolecki, K. Flaga-Gieruszyńska (eds), Warszawa 2009, p. 351; E. Gapska, Wady orzeczeń sądowych w postępowaniu cywilnym, Warszawa 2009; A. Góra-Błaszczykowska, *Nieistnienie orzeczenia – kilka uwag na temat praktycznych konsekwencji uznania orzeczenia za nieistniejące* [in:] Ewolucja polskiego postępowania cywilnego wobec przemian politycznych, społecznych i gospodarczych. Materiały konferencyjne Ogólnopolskiego Zjazdu Katedr Postępowania Cywilnego, Szczecin–Niechorze, 28–30 Sept. 2007, H. Dolecki, K. Flaga-Gieruszyńska (eds), Warszawa 2009, p. 183; A. Góra-Błaszczykowska, Orzeczenia w procesie cywilnym. Komentarz do art. 316–366 k.p.c., Warszawa 2020; K. Grzesiowski [in:] System postępowania cywilnego. Orzeczenia sądowe, vol. 4, A. Góra-Błaszczykowska, P. Osowy (eds), Warszawa 2025, chapter 3.1; J. Gudowski, Iudex impurus *(sędzia skażony) Wyłączenie z mocy samej ustawy sędziego objętego zarzutem wadliwego powołania lub przejścia na wyższe stanowisko sędziowskie*, PS 2022, 5, p. 7; S. Hanausek, Orzeczenie sądu rewizyjnego w procesie cywilnym, Warszawa 1966; K. Korzan, *Wyroki nieistniejące*, PPiA 1976, 7, Acta UWr., ss. 185–198; J. Jankowski, *Wadliwa postać orzeczenia sądu I instancji w procesie cywilnym*, Pal. 1987, 12, p. 15; K. Markiewicz, *Problem* sententia non existens *na tle orzecznictwa Sądu Najwyższego*, Rej. 2002, 11, pp. 92–117; K. Markiewicz, A. Torbus, *Zagadnienie* 'sententia non existens' *w postępowaniu cywilnym a problem kompetencji do orzekania nieprawidłowo powołanych sędziów sądów powszechnych* [in:] Symbolae Andreae Marciniak dedicatae. Księga jubileuszowa dedykowana Profesorowi Andrzejowi Marciniakowi, J. Jagieła, R. Kulski (eds), Warszawa 2022, p. 329; K. Markiewicz, *Niezawisłość i niezależność sądu jako gwarancja dostępu do ochrony prawnej* [in:] K. Flaga-Gieruszyńska, R. Flejszar, E. Marszałkowska-Krześ (eds), Dostęp do ochrony prawnej w postępowaniu cywilnym, Warszawa 2021; A. Miączyński, *Faktyczne i prawne istnienie orzeczenia w sądowym postępowaniu cywilnym*, ZN UJ, Prace Prawnicze [Legal Works] 1972, 55, pp. 103–118; K. Piasecki [in:] System prawa procesowego cywilnego. Postępowanie rozpoznawcze przed sądami pierwszej instancji, Z. Resich (ed.), Warszawa 1987, vol. 2, pp. 244–247; M. Sawczuk, Wznowienie postępowania cywilnego, Warszawa 1970; W. Siedlecki, *Zaskarżalność orzeczeń w sądowym postępowaniu cywilnym* [in:] Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha, M. Jędrzejewska, T. Ereciński (eds), Warszawa 1985; K. Zaradkiewicz, *Abusive Constitutionalism in Poland: On the self-delegitimisation of the judiciary*, JoMS 2024, 59 (special issue 5), pp. 265–299; F. Zedler, Glosa do uchwały SN z 7 lutego 1997 r. (III CZP 125/96), OSP 1997, 12, 225; T. Zembrzuski, Nieważność postępowania w procesie cywilnym, Warszawa 2017; T. Zembrzuski, Glosa do postanowienia SN z 31 sierpnia 2018 r., I CSK 300/18, OSP 2019/04, p. 34.

[10] See in particular: Decision of the Supreme Court of 27.09.1955, III CR 1029/54, NP 1956 no. 1, p. 126; Judgment of the Supreme Court of 27.02.1964, II CR 226/62, RPEiS 1965, 3; Decision of the Supreme Court of 09.04.1969, II CR 112/68, Legalis; Resolution of the Supreme Court of 17.10.1978, III CZP 62/78, Legalis; Judgment of the Supreme Court of 18.04.1979, III CRN 60/79, Legalis; Resolution of the Supreme Court of 07.02.1997, III CZP 125/96, Legalis; Resolution of the Supreme Court of 26.09.2000, III CZP 29/00, Legalis; Resolution of the Supreme Court of 13.03.2002, III CZP 12/02, Legalis; Decision of the Supreme Court of 07.02.2003, III CZP 94/02, Legalis; Decision of the Supreme Court of 17.11.2005, I CK 298/05, Legalis; Decision of the Supreme Court of 27.06.2012, IV CZ 39/12, Legalis; Judgment of the Supreme Court of 20.12.2012, IV CSK 219/12, Legalis; Decision of the Supreme Court of 12.12.2013, III CSK 300/13, Legalis; Judgment of the Supreme Court of 11.12.2014,

with increased force due to the jurisprudence of the CJEU[11] concerning the problem of the rule of law in the Polish justice system in the broad sense. Hence, there was a need to take the floor in this extremely important discussion. The aim of the presented considerations is an attempt to sort out the classes of judgments covered by the notion *of sententia non existens*, which should contribute to preventing legal chaos in the judiciary.

The Most Important Doctrinal Views on Non-Existent Judgments

Among the many views expressed in the doctrine on the subject of non-existent judgments, it is worth presenting in more detail those positions which have had a significant impact on the shaping of legal and procedural thought in this respect. At the same time, it should be emphasised that the very term 'non-existent judgment', which is also referred to as 'non-judgment' or 'semblance of judgment',[12] is disputed in science. As F. Zedler aptly pointed out, 'there is in fact agreement in doctrine on only one thing, that non-existent judgments in our law exist'.[13]

According to the classical definition by K. Korzan,[14] a non-existent judgment is a judgment that does not comply with formal requirements to the extent depriving it of legal existence, and the criterion distinguishing non-existent judgments from defective judgments is the impossibility to remove the defects of the judgment by any means provided for by procedural law,

SNO 61/14, Legalis; Decision of the Supreme Court of 25.11.2015, II CZ 79/15, Legalis; Decision of the Supreme Court of 26.07.2017, III CZ 25/17, Legalis; Decision of the Supreme Court of 31.08.2018, I CSK 300/18, Legalis; Judgment of the Supreme Court of 07.02.2023, II CSKP 432/22, Legalis.

[11] In its judgment of 06.10.2021. CJEU in Case C-487/19 (theses: 155, 159, 160, 161) indicated that a decision of a court may be deemed 'inexistent' (which corresponds to the institution of *sententia non existens* in the Polish literature on the subject) if it is from the totality of the conditions and circumstances under which the process of appointing a judge was carried out that the appointment was made in flagrant breach of the fundamental norms forming an integral part of the and functioning of the judiciary, and that the correctness of the effect to which the said process led, so that, in the opinion of the individuals, reasonable doubts may have arisen as to the independence and impartiality of the judge, which means that such a judicial decision cannot be regarded as having been handed down by an independent and impartial court previously established by law within the meaning of Art. 19(1), second subparagraph, of the Treaty on European Union.

[12] M. Sawczuk (Wznowienie..., p. 71) alleged that this notion is internally contradictory, because a judgment cannot simultaneously exist ('judgment') and not exist ('non-existence'). This view was agreed with, *inter alia*, by A. Miączyński (*Faktyczne*..., p. 105), who stressed that he used the term because of the accepted practice of its use. These reservations, however, were not shared by, *inter alia*, K. Korzan (*Wyroki*..., p. 189), who reasonably pointed out that the notion of a 'non-existent judgment' refers only to a judgment in the legal sense, and not to a judgment as a factual event. Hence, there seems to be no need, as suggested by some doctrine representatives, supplementing the notion of 'non-existent judgment' with the attribute 'legally' (E. Gapska, *Ewolucja*..., pp. 351 and 352; E. Gapska, *Wady*..., pp. 147 and 148).

[13] F. Zedler, Glosa do uchwały SN z 7 lutego 1997 r. (III CZP 125/96), OSP 1997/12/225.

[14] K. Korzan, *Wyroki*..., pp. 185–198.

neither by way of rectification of the judgment nor by way of appeal measures (ordinary and extraordinary). Among the requirements determining the existence of a judgment, the Author includes:

- issuance of a written judgment by the court in an existing trial,
- identification of the parties,
- resolution of the subject matter of the dispute,
- the announcement of the judgment and, where this is not mandatory, the signing of the judgment by the deciding judges.

According to W. Broniewicz,[15] writing down and signing the operative part of a judgment and its announcement (except in cases when this is not required) are constitutive elements of issuing a judgment. In the absence of one of these elements, no judgment is issued at all within the meaning of the provisions of the Code of Civil Procedure. Thus, no judgment will be rendered if the operative part of the judgment is formed without being signed and promulgated, or with signing but without promulgation, as well as if the operative part of the judgment is promulgated without being written down first or if an unsigned operative part is promulgated.

According to the view of A. Marciniak[16] and A. Góra-Błaszczykowska[17] for the existence of a judgment it is necessary that it was issued by the court in the existing proceedings, that it contains a ruling and that it was drawn up in writing. On the other hand, improper composition of the court, defects as to the commencement and course of the proceedings, ambiguity (contradiction) of the ruling, as well as the lack of signing and announcing the operative part cause only a defect in the issued judgment allowing for its appeal in the proper procedure or rectification. In this sense, a non-existent judgment is therefore only a judgment rendered not by a court or in non-existent proceedings, not containing any decision, as well as a judgment whose operative part was not written down.

On the other hand, B. Bladowski[18] includes judgments to non-existent judgments:

(1) issued by a person or team not representing a judicial authority;
(2) issued in a non-existent trial, i.e. one in which there is no opposing party;
(3) lacking the essential elements provided for by law;
(4) unsigned by the members of the panel;
(5) in which there is no adjudication on the claims of the parties;
(6) which is unlawful or which awards a benefit so defective that it is unenforceable.

[15] W. Broniewicz, Postępowanie..., p. 219.
[16] A. Marciniak [in:] W. Broniewicz, A. Marciniak, I. Kunicki, Postępowanie..., p. 296.
[17] A. Góra-Błaszczykowska, Orzeczenia..., kom. do art. 316, pt. 3, Nt 14.
[18] B. Bladowski, *Orzeczenia*..., pp. 79–85.

K. Piasecki[19] submits that the term 'non-judgment' should be referred exclusively to judgments issued by an organ which is not a court in the constitutional sense (i.e. by an organ which does not have the features of a jurisdictional organ appointed to resolve civil cases). Such 'non-judgments' cannot be the subject of an appeal by means of legal remedies regulated by the Code of Civil Procedure, as they do not exist in the procedural legal sense. On the other hand, in the case of a defect in the judgment consisting in the absence of signatures of all members of the adjudicating panel or the absence of an announcement, such a 'non-existent judgment' may be subject to appeal, as the question of its procedural existence must be clarified. In addition, the deciding court cannot itself remedy the situation and deliver a new judgment in place of the judgment affected by the indicated defects.

A. Miączyński[20] emphasises that judgments are legal acts and should be made in a strictly prescribed form. Any deviation from the statutory conditions causes the judgment to be defective. However, these irregularities do not yet invalidate the factual and legal existence of a judgment as a legal act. In order for this to occur, it is the Author's opinion that one of the essential constitutional elements of a legal action must be missing (the absence of an element which determines the meaning of a legal action). The non-existent judgment is thus a procedural action which, for lack of the essential features required by the law, cannot be regarded as a procedural action in the legal sense (i.e. it is a semblance of a judgment deprived of its external essence).

According to Ł. Błaszczak,[21] a non-existent judgment in the legal sense refers to a situation in which one of the constitutive elements constituting the existence of a judgment in the legal procedural sense is missing. In the Author's opinion, in addition to the issuance of a judgment by a court in an existing proceeding, signing and announcement are also constitutive elements that create the legal existence of a judgment. The announcement (when required) determines the legal existence of the judgment, but nevertheless cannot effectively take place in relation to a judgment that has not been previously written down and signed. Both the signing of the judgment and its announcement (as constitutive elements) will therefore determine the legal existence of a court judgment. In the absence of either of these, we are always dealing with a *sententia non existens*.

[19] K. Piasecki [in:] System..., Z. Resich (ed.), pp. 244–247.
[20] A. Miączyński, *Faktyczne*..., pp. 103–118.
[21] Ł. Błaszczak, *Orzeczenia*..., ss. 7–29; Ł. Błaszczak, *Wybrane*..., p. 2.

Supreme Court Case Law on Non-Existent Judgments

The jurisprudence of the Supreme Court, which, besides not being uniform, has also been changing over the years, is also comparatively diverse in terms of determining the class of non-existent judgments. The Supreme Court first recognised the defect consisting in the lack of promulgation as resulting in the revocation of the contested judgment,[22] and then took a different position[23] and held that a judgment subject to promulgation and not promulgated is a non-existent judgment in the legal procedural sense.

Also on the issue of the consequences of the lack of signatures on a judgment, the Supreme Court has expressed its opinion on several occasions, albeit inconsistently. According to one position, the absence of the signature of any of the judges on a judgment is grounds for the 'nullity' of the judgment, mandating its annulment in the course of the instance.[24] A second position holds that the absence of signatures, irremovable by any means, renders the judgment in a legal sense to be considered non-existent.[25] According to the third view, on the other hand, despite the absence of signatures on the operative part, the judgment binds the court from the moment of its promulgation and cannot be considered non-existent, but if it is challenged, it is subject to annulment.[26]

In a decision[27] of 25 November 2015. The Supreme Court took the view that in the event that a judgment rendered in a collegial composition is signed only by some members of that composition, such a judgment is nevertheless an existing judgment, but the lack of signatures of some of the judges ruling in the collegial composition only subtracts from such a judgment the jurisdictional force to the extent of the missing signature. However, the jurisdictional force of the judgment is retained to the extent covered by the existing signatures on the operative part, but this means that the judgment was issued under the conditions of nullity of proceedings specified in Article 379(4) of the Code of Civil Procedure, i.e. contradiction of the composition of the court with the provisions of the law. The judgment is therefore subject to appeal and must be removed from legal circulation by the higher court by setting it aside and quashing the proceedings in the part affected by the invalidity.

[22] Resolution of the Supreme Court of 17.10.1978, III CZP 62/78, Legalis.
[23] Decision of the Supreme Court of 17.11.2005, I CK 298/05, Legalis.
[24] Judgment of the Supreme Court of 27.02.1964, 2 CR 226/62, RPEiS 1965, 3.
[25] Decision of the Supreme Court of 9.04.1969, II CR 112/68, Legalis; Judgment of the Supreme Court of 11.12.2014, SNO 61/14, Legalis.
[26] Resolution of the Supreme Court of 17.10.1978, III CZP 62/78, Legalis; Judgment of the Supreme Court of 18.04.1979, III CRN 60/79, Legalis.
[27] Decision of the Supreme Court of 25.11.2015, II CZ 79/15, Legalis.

In contrast, in a decision[28] of 31 August 2018. The Supreme Court reiterated the opposite view that a judgment whose operative part has not been signed by all the judges constituting the court ultimately does not exist in the legal procedural sense and this regardless of whether it is a single or multi-member composition. The signatures of all the judges on the operative part of the verdict are the constitutive elements that give a judicial act in a trial the value of a jurisdictional act. The absence of the signatures of all judges therefore deprives the 'non-judgment' of its jurisdictional force and renders it non-existent in the legal-procedural sense.

In the jurisprudence[29] of the Supreme Court, it is a well-established view that there is non-existent judgment where the signature is under the justification and not under the operative part of the judgment. However, in one of the most recent judgments[30] addressing this issue, the Supreme Court held that it is not a non-existent judgment that was issued by a common court prior to the formation of this line of jurisprudence determined by the resolution of the Supreme Court of 13 March 2002 (III CZP 12/02) and the decision of the Supreme Court of 7 February 2003 (III CZP 94/02), in such a way that the signature under the judgment was affixed not under the operative part, but under the entire document including the justification of the judgment. In the Supreme Court's view, it is inadmissible to undermine the effectiveness of rulings which do not subsequently meet formal requirements resulting from the establishment (decoding) of a specific content of the legal-procedural norm, and which, at the time of their issuance, in the light of common practice, corresponded to the accepted requirements deemed to result from the content of the provisions of procedural law. With this decision, the Supreme Court considered as existing judgements which, in the light of the current views of the jurisprudence, are non-existent.

An attempt to define *sententia non existens*

A non-existent judgment is a judgment that does not legally exist, i.e. such a judgment exists as a factual event (it took place objectively in reality), but due to a certain defect in this (conventional) act, it does not produce legal effects (it has no legal existence, although it creates the appearance of an existing judgment). A judgment that does not actually exist, on the other hand, is a judgment that was not even a fact in reality. *De facto* non-existence of a judgment in whole or in part we deal with when the court did not issue a judgment (no factual event in the form of a judgment) or when it issued a judgment in

[28] Decision of the Supreme Court of 31.08.2018, I CSK 300/18, Legalis.
[29] Resolution of the Supreme Court of 13.03.2002, III CZP 12/02, Legalis; Decision of the Supreme Court of 7.02.2003, III CZP 94/02, Legalis.
[30] Judgment of the Supreme Court of 07.02.2023, II CSKP 432/22, Legalis.

which it ruled only on a part of the claim or on some of the claims (i.e. *de facto* and *de iure* the court issued a partial judgment, which it wrongly qualifies as a full judgment).[31] In the latter situation, the judgment does not actually exist only in part – to the extent of the adjudication that was not there.

The classification of genuinely non-existent judgments is unlikely to cause any doubt in science and case law.[32] What is disputed, however, is the distinction of (legally) non-existent judgments from defective judgments. Such a criterion should be the impossibility to remove the shortcomings of a judgment by way of rectification of the judgment or by way of appeals (ordinary and extraordinary).[33] A non-existent judgment is thus the result of irregularities that have not been (and cannot be) eliminated by means of the available legal remedies, i.e. when all the available rectification mechanisms have not led to the elimination of the deficiencies and healing of the judgment.[34] In such a situation, when a judgment actually exists but has a defect then it should be a legally existing judgment. Of course, there remains the problem of defining (the degree or type) of defects in a judgment which allow the implementation of rectification or appeal procedures from those defects which, due to the violation of (constitutive) rules (features), prevent the application of these procedures. The provisions of the Code of Civil Procedure do not explicitly indicate the elements that are essential for the legal existence of a judgment, leaving this issue open to clarification in the process of interpretation. As can be seen from the views of the doctrine and case law presented earlier, there is no consensus in establishing a catalogue of requirements determining the existence of a judgment.

Issuing a judgment as a conventional act

It may be helpful in this respect to refer to the concept of passing a judgment as a conventional action.[35] The legal norms decoded from the provisions of the Code of Civil Procedure shaping the activity of issuing a judgment indicate constitutive elements and formal elements. Constitutive elements are regulated by the so-called rules of conventionalization and only their correct implementation justifies assigning to certain actions the sense of making the

[31] B. Bladowski, *Orzeczenia*..., pp. 79–85.

[32] According to K. Markiewicz (*Problem*..., pp. 103–105), a partial lack of a ruling does not mean that a judgment in this respect does not exist. In the Author's opinion, a judgment which does not contain the missing settlement exists from a legal and factual point of view. Similarly, E. Gapska (*Ewolucja*..., pp. 357 and 358), according to which a breach of the requirement to write down the operative part of a judgement results in the non-existence of a judgement only when it concerns a failure to write down the judgement in its entirety, because omitting only some of the decisions makes it possible to supplement the judgement, which exists despite the lack of a decision that should have been included in it.

[33] K. Korzan, *Wyroki*..., p. 192; Ł. Błaszczak, *Orzeczenia*..., p. 16.

[34] T. Zembrzuski, Nieważność..., p. 195.

[35] S. Czepita, *Zagadnienie*..., p. 139; S. Czepita, G. Szacoń, *Teoretyczne*..., p. 99.

act of judgment as a conventional action, i.e. the existence of a judgment. Formal elements, on the other hand, are regulated by the so-called rules of formalisation, which define the correct way of performing a certain conventional act, the violation of which results in the defect of the judgment, but does not determine the existence of the given act as a conventional act. Thus, the rules of convention constitute a determinant of the conditions (elements, features) necessary (constitutive) for the attribution of a certain action as a conventional action. The rules of formalisation, on the other hand, indicate 'only' the manner in which the conventional act is performed.

Therefore, on the basis of the concept of conventional acts, we will call a non-existent judgment the product of the sentencing act, which has been produced in violation of the relevant rules of conventionalization. There is no doubt that it is problematic to distinguish which legal norms formulate the rules of conventionalization and which the rules of formalization.[36] For the analysis of the issue of a non-existent judgment, the starting point, as aptly pointed out by S. Czepita,[37] should be the analysis of the very concept of a judgment. Since a judgment is a ruling that decides the case on the merits in a trial, then, based on the definition of a conventional action,[38] it may be assumed that from the provisions of the Code of Civil Procedure, as well as the Constitution, which is a specific source of rules of conventionalization, three necessary (constitutive) features (elements) arise, which should make up a judgment as a legal act being the substrate of a complex action of adjudication.[39] The constitutive features of a judgment thus include: (1) the issuance of a judgment by the court, (2) in a trial, (3) having a settlement of the case.[40] The other issues concerning the act of issuing a judgment (especially its recording, signing or announcement), as well as those concerning the proper form and content of the judgment itself, appear to be formalising rules defining the correct way of performing the act of sentencing, the violation of which entails 'only' a defect in the judgment. The issue of binding the court to the issued judgment and determination of the

[36] The most telling example that the distinction between the rules of conventionalization and the rules of formalization in the case of the act of passing judgment is highly problematic is shown by the evolution of the views of S. Czepita. In 2006 (see S. Czepita, *Zagadnienie*..., p. 148), the Author stated that it does not follow from the provisions of the Code of Civil Procedure whether the requirement to sign a judgment and announce it is a constitutive element of issuing a judgment. This issue is not obvious, since the provisions of the Code of Civil Procedure may be understood as designating certain formalisations of the conventional act of issuing a judgment, rather than its additional conventionalisations. In contrast, in 2012 (see S. Czepita, G. Szacoń, *Teoretyczne*..., pp. 122 and 123), the Author took the view that the signing of the judgment and its announcement are, however, constitutive elements of the activity of issuing a judgment, although it is not obvious and does not follow directly from the wording of the provisions of the Code of Civil Procedure. The last position of the Author is based on subtle semiotic analyses, with which one may argue.

[37] S. Czepita, G. Szacoń, *Teoretyczne*..., p. 109.

[38] L. Nowak, S. Wronkowska, M. Zieliński, Z. Ziembiński, *Czynności konwencjonalne w prawie*, SP 1972, 2, p. 33.

[39] K. Korzan, *Wyroki*..., pp. 185–198; A. Miączyński, *Faktyczne*..., pp. 103–118; S. Czepita, G. Szacoń, *Teoretyczne*..., p. 110.

[40] These are peculiar *essentialia negotii* of a judgment, as E. Gapska (Wady..., p. 162) stated about the constitutive formal requirements for the existence of a judgment.

decisive moment for the judgment to acquire binding force (Article 332 § 1 of the Code of Civil Proceedings) is also irrelevant for determining the prerequisites for the legal existence (existence) of the judgment.[41] Thus, the criterion of acquiring legal force is not a necessary (constitutive) element for the existence of a judgment, but only a formal element of the sentencing activity. It should be emphasised that not every defect in the judgment resulting from violation of the formalising rules implies the necessity to set it aside. Some defects are of a merely 'cosmetic' nature, which do not cause any negative consequences and may be removed by way of rectification of the judgment (Article 350 of the Code of Civil Procedure). On the other hand, more serious defects, including invalidity of proceedings give grounds to challenge the judgment by way of appeals (ordinary and extraordinary). Irregularities that can be removed by way of rectification or by way of appeals do not, therefore, deprive the judgment of its legal existence, and the judgments rendered are existing judgments, albeit defective ones. Even the invalidity of the proceedings does not deprive the judgment of its legal effect, but only justifies challenging it. This is because the fundamental effect of any procedural defect of the court – due to violation of formalising rules – is that the judgements issued are appealable. This is the rule under the Code of Civil Procedure, and an exception to this rule is the non-existence of a judgment as a consequence of a qualified defect resulting from a breach of the rules of convention.[42]

Types (Groups) of Non-Existent Sentences

Hence, it is necessary to follow the views of the doctrine, in particular those of A. Góra-Błaszczykowska[43] advocating a narrow view of the concept of *sententia non existens* and to consider that the class of non-existent judgments includes only the following types of judgments:

(1) a judgment rendered not by the court;
(2) a judgment rendered in a non-existent trial;
(3) a judgment whose operative part has not been recorded (fixed);
(4) a judgment that does not contain any adjudication.

[41] For a different view see, *inter alia*, A. Miączyński (*Faktyczne*..., pp. 103–118), who points out that when a statute binds the legal force of a judgment to its announcement, this fact conditions the legal existence of the judgment. If, on the other hand, a judgment rendered in closed session acquires binding force from the moment it is signed, then the signing itself is a necessary prerequisite for the legal existence of the judgment; B. Bladowski (*Orzeczenia*..., pp. 79–85), who emphasises that the acquisition of legal force (binding) by a judgment from the moment it is announced or signed means that these acts are prerequisites for the legal existence of the judgment.

[42] K. Markiewicz, *Problem*..., p. 98.

[43] A. Góra-Błaszczykowska, *Nieistnienie*..., pp. 183–188.

The first group of non-existent judgments refers to the feature defined as 'the issuance of a judgment by a court'. Among the accepted constitutive features (elements) of a judgment, it is the court as the competent authority to issue a judgment that is of fundamental importance. There is no doubt in the thesis that a non-existent judgment is a judgment issued by an organ which is not a court.[44] This premise refers to the court as an organ of judicial power. Whether an organ is a court is determined by the constitutional provisions. Within the meaning of Article 177 of the Constitution, a court is an organ of public authority consisting of judges appointed in accordance with the procedure provided for in Article 179, and therefore appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary. The Constitution independently defines 'court' as well as 'judge' in the Polish model of the judiciary, setting requirements for the assessment of these concepts.[45] Appointment by the President at the request of the National Council of the Judiciary, is a necessary and sufficient condition for the effective recognition of the appointee as a judge. The constitutive elements of the acquisition of judicial investiture in the light of constitutional norms are therefore only two: the proposal of the National Council of the Judiciary and the appointment by the President. The dispute concerning the National Council of the Judiciary shaped by the provisions of the Act of 08.12.2017 in terms of the manner of selection of the judicial members of the council has no impact on the effectiveness and irrevocability of the appointment of judges by the President[46]. Hence persons appointed to the office of judge by the President on the proposal of the National Council of the Judiciary shaped by the provisions of the Act of 08.12.2017 are judges and the court with their participation is a court within the meaning of the Constitution.[47] The constitutional position of the President means that the appointment of judges, as the staffing of the judicial bodies (courts), adjudicating on behalf of the Republic of Poland, is not subject to the control of any other body, including the court.[48] The powers of the President derive directly from the Constitution and the fact of winning the presidential election, which is an emanation of

[44] For example, a 'judgment' issued by the National Council of the Judiciary will not be a judgment, as the NCJ is not a court. Neither will a 'judgment' issued by a court, as an organisational unit of the judiciary, but with the participation of persons who do not represent the judiciary, i.e. employees of the court secretariat, a court reporter or an assistant judge, be a judgment.

[45] Decision of the Supreme Court of 01.07.2019, IV CSK 176/19, Legalis.

[46] The Constitutional Court, in its judgment of 25.03.2019 (K 12/18, Legalis) confirmed the constitutionality of the current method of electing the members of the NCJ (based on the so-called democratic legitimacy model as opposed to the previous system of election based on the co-optation-corporate model), thereby strengthening the presumption of constitutionality of the relevant provisions of the Act on the National Council of the Judiciary (see K. Zaradkiewicz, *Abusive*..., pp. 265–299).

[47] Panel of the Supreme Administrative Court of 13.08.2024, https://www.nsa.gov.pl/ogloszenia/stanowisko-kolegium-naczelnego-sadu-administracyjnego-w-sprawie-statusu-asesorow-sadowych-w-wojewodzkich-sadach-administracyjnych,news,182,1079.php [accessed: 01.11.2024].

[48] Decision of the Supreme Administrative Court of 09.10.2012, I OSK 1891/12, Legalis.

the will of the Nation expressed in a direct form. Therefore, encroachment on these presidential prerogatives by any other organ is impermissible, as every organ, including the court, acts within the powers granted to it on the basis and within the limits of the law.[49]

Thus, if a judgment has been formally issued by a court within the meaning of the applicable constitutional provisions, it is an existing judgment and there are no grounds for challenging its legal existence. The fact that the composition of the court was irregular has no effect on the recognition of the judgment as existing.[50] In the case where the composition of the court was inconsistent with the provisions of the law (including if an unauthorised person participated in the composition of the court), the judgment issued exists, although the proceedings are null and void and it is only by means of appeals that such a judgment may be deprived of its legal effect (Article 379 pt. 4 and Article 401 pt. 1 of the Code of Civil Procedure). It is clear that the adjudicating court should also comply with the requirements set out in Article 45(1) of the Constitution of the Republic of Poland, Article 267 of the Treaty on the Functioning of the European Union conjunction with the second paragraph of Article 19(1) of the Treaty on European Union conjunction with Article 47 of the Charter of Fundamental Rights and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950. as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2. However, a violation by the adjudicating court of the constitutional, treaty or convention standards indicated does not deprive the judgment rendered, which exists as a legal fact and event (*sententia existens*).[51]

---

[49] Decision of the WSA in Warsaw of 29.10.2024, VI SA/Wa 3316/24, Legalis.

[50] A. Miączyński, *Faktyczne*..., p. 109.

[51] At this point, it should be emphasised that possible defects in the nomination process of a judge do not have any impact on the status of the person concerned as a judge, who from the moment he or she takes office may effectively exercise his or her function in the administration of justice (investiture). Judgments of the Court of Justice of the European Union or of the European Court of Human Rights do not have direct legal effect and cannot automatically deprive a specific body of the status of a court within the meaning of the Polish constitutional provisions (see opinion of the Venice Commission of 14.10.2024, CDL-AD(2024)029; https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e [accessed: 01.11.2024]). Hence, any emerging views on the non-existence of judgments, issued by judges appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary shaped by the provisions of the Act of 08.12.2017 amending the Act on the National Council of the Judiciary and certain other acts (Dz.U. z 2018 r., poz. 3 ze zm.), should be treated in terms of journalistic statements (see K. Markiewicz, A. Torbus, *Zagadnienie*..., p. 329; K. Markiewicz, *Niezawisłość i niezależność sądu jako gwarancja dostępu do ochrony prawnej* [in:] Dostęp do ochrony prawnej w postępowaniu cywilnym, K. Flaga-Gieruszyńska, R. Flejszar, E. Marszałkowska-Krześ [eds], Warszawa 2021, *passim*). In the resolution of the combined Chambers – Civil, Criminal and Labour and Social Insurance of 23.01.2020 (BSA I-4110-1/20), the Supreme Court unequivocally pointed to the effect of the invalidity of civil proceedings and not the non-existence of the judgment, as it expressed the position that the contradiction of the composition of the court with the law within the meaning of Article 379 pt. 4 of the Code of Civil Procedure may also occur when the composition of the court includes a judge appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary shaped by the provisions of the Act of 08.12.2017. The literature on the subject (see J. Gudowski, Iudex

The second group of non-existent judgments consists of judgments rendered in a non-existent trial. This distinction refers to the constitutive feature of a judgment referred to as 'in trial'. Any trial can only take place with opposing litigants (plaintiff and defendant). The absence of both or one of the parties means that civil proceedings do not exist in the legal sense.[52] Legally non-existent proceedings will also be proceedings taking place without a lawsuit.[53] Any judgment rendered in non-existent proceedings is therefore a non-existent judgment. Every non-existent proceeding involves the non-existence of a judgment because a non-existent proceeding cannot end in an existing judgment.[54] An example of a non-existent process is a situation where the plaintiff as sole heir brought an action against the guardian of the estate and thus litigated with himself, i.e. there was no defendant.[55] Only the absence of a litigant and of a primary nature, i.e. from the very beginning, leads to the non-existence of the trial and the judgment rendered. On the other hand, the lack of legal or procedural capacity of a party is a cause of nullity of the proceedings (Article 379 pt. 2 of the Code of Civil Procedure) and may constitute only grounds for challenging the judgment, and not for declaring the judgment non-existent.

The third group of non-existent judgments comprises judgments that have not been recorded. The last group, on the other hand, concerns judgments that have been recorded but have no adjudication. The basis for the distinction between these two types of non-existent judgments is the constitutive feature of the judgment referred to as 'having an adjudication of the case'. It is worth emphasising that these groups of judgments are made in existing proceedings (trials). The constitutive feature of a judgment is that its content must be recorded (fixed). As long as the content of the judgment is only in the realm of imagination (in the minds of the members of the adjudicating panel), such a judgment does not exist. Pursuant to Article 324 § 1 of the Code of Civil Procedure, as a rule, a judgment should be recorded in writing by 'writing down the operative part of the judgment'. In the case of proceedings initiated via an ICT (Information and Communication Technology) system, the judgment should be recorded in electronic form in the ICT system (Article 324 § 4 of the Code of Civil Procedure). It follows from this regulation that the judgment must exist as a fact (factual event), as the content of the sentence should be recorded on paper or in the ICT system in the form of a digital record. From this provision, it is possible to decode the legal norm requiring the content of the operative part of the judgment to be fixed in written or electronic form.

---

impurus..., p. 7) also indicates that the participation of such a judge in the cognizance of a case may only be the basis for a challenge to an existing judgment on the grounds of invalidity of the proceedings.

[52] K. Korzan, *Wyroki*..., p. 193; B. Bladowski, *Orzeczenia*..., pp. 79–85.

[53] Ł. Błaszczak, *Orzeczenia*..., p. 12.

[54] T. Zembrzuski, Nieważność..., p. 197.

[55] K. Korzan, Wyroki..., *ibid.*; Ł. Błaszczak, *Orzeczenia*..., *ibid.*

The recording of the content of the operative part is thus an element constituting the judgment as a conventional act. On the other hand, the obligatory written form (or electronic form in the case of proceedings initiated *via* an ICT system) is merely a formalising requirement, the breach of which no longer affects the legal existence of the judgment. The judgment may therefore be recorded (fixed) in any way. Such fixed judgment (e.g. a file stored in the memory of a device) is already an existing judgment, and a breach of the obligatory written form may only constitute the basis for an appeal. The judgment must have a settlement of the case, i.e. in addition to being recorded, it should also contain a specific formula. The absence of a decision in the operative part of the judgment means that the judgment does not exist. Since a judgment has to decide the case on its merits, the absence of any decision in the operative part of the judgment must mean that there is no judgment. A judgment on the file which contains only *rubrum* (introductory part), even if signed by the members of the formation of the court, but no *tenor* (the actual decision) is therefore not a judgment. Such a judgment, even if it attains formal validity, still does not acquire *res iudicata*, because a final judgment enjoys *res iudicata* only as regards what, in connection with the cause of action, was the subject of the decision.[56] Thus, only the absence of any adjudication at all can cause a judgment to be declared non-existent. Possible vagueness, incomprehensibility or contradiction of the decision no longer deprives the judgment of its legal existence.

Defects in the judgment which do not result in a non-existent judgment

Other defects or shortcomings of the judgment, in particular ambiguity (contradiction) of the decision, lack of formal elements in the operative part, lack of signature or announcement of the operative part do not deprive the judgment of its existence, but cause 'only' a defect in the judgment, allowing it to be challenged or rectified (depending on the type of defect, there may be a rectification of the judgment, clarification by interpretation or challenge by means of legal remedies provided for by law).[57] In particular, it is necessary to move away from the view that signing and announcement are among the constitutive elements of the act of issuing a judgment. Rather, they are requirements arising from procedural formalism (the so-called formalising rules), the violation of which does not deprive the judgment issued of its legal force.

[56] Ł. Błaszczak, *Orzeczenia*..., p. 18.

[57] Defects in the content of the operative part of the judgment may be rectified. In particular, irregularities in the wording of the operative part do not render the judgment null and void. Errors, including contradictions in the operative part (*tenor*) may also be rectified by rectification (rectification or interpretation of the judgment). Hence, these defects can in no way prove the non-existence of the judgment.

If the court has issued a judgment that has been recorded, the judgment exists not only as factual but also as legal events. The absence of the signature of all or part of the members of the bench, as well as the failure to announce the judgment, are qualified defects that should constitute grounds for challenging the judgment. These defects may result in the invalidity of the proceedings, referred to in art. 379 pt. 4 and 5 of the Code of Civil Procedure being the basis for obligatory revocation of the appealed judgment, or for resumption of the proceedings (Article 401 pt. 1 and 2 of the Code of Civil Procedure). Where a judgment has been written down and subsequently signed by all members of the panel and has not been announced in a situation where a rule required its announcement, such a judgment undoubtedly exists in legal terms. The failure to promulgate the judgment constitutes a defect in the judgment, which may constitute grounds for an appeal against the judgment. In the case of the promulgation of a judgment that has not been signed beforehand, we are also dealing with an existing judgment[58]. The absence of the signature of all or part of the members of the panel under the judgment announced is a defect in the judgment that allows it to be challenged.[59] On the other hand, it is indisputable that the lack of a written justification of the judgment or the lack of signatures under the justification of the judgment, even if the court is obliged to prepare this justification *ex officio*, does not deprive the judgment of its existence, as the justification is not one of the constitutive elements of the judgment.[60]

From the considerations presented, it follows that in typical procedural situations (in which the case is decided by the court in existing proceedings), the non-existence of the judgment is only dealt with in the case of the announcement of a judgment that has not been previously recorded (the court announces the judgment 'off the top of its head'). However, the subsequent rectification of this deficiency will not restore the legal existence of the judgment.[61] If, on the other hand, there has been a prior recording of the judgment (in any form, e.g. the court reads out the judgment from a computer monitor), the deficiencies concerning its signing or announcement no longer deprive it of the power of a jurisdictional act. The judgment, as a procedural act ending the proceedings, has been made and exists as a fact and a legal event.[62] Such a judgment, in spite of the misconduct committed by the court, exists from the moment it is made as a procedural act, i.e. as an act that is the culmination

[58] A. Miączyński, *Faktyczne*..., p. 112.
[59] B. Bladowski, *Orzeczenia*..., pp. 79–85; T. Zembrzuski, Glosa do postanowienia SN z 31 sierpnia 2018 r., I CSK 300/18, OSP 2019/04, p. 34.
[60] A. Miączyński, *Faktyczne*..., p. 111; Ł. Błaszczak, *Orzeczenia*..., p. 24.
[61] K. Korzan, *Wyroki*..., p. 195.
[62] Following W. Siedlecki (*Czynności procesowe*, PiP 1951, 11, p. 704), we can define a procedural action as an action of a procedural entity (court) which, according to the applicable regulations, can have an effect on a civil trial as a complex legal act.

of proceedings that existed both in fact and in law.[63] Therefore – in typical procedural situations – it is necessary to narrow the concept of non-existent judgments to judgments that have not been recorded at all (not fixed). A non-existent judgment should be regarded as only the 'physical' absence of a judgment. All defects and errors in a recorded judgment (with the exception of the absence of any adjudication) are defects removable by means of appeal or rectification. The risk of the existence of defective judgments is inscribed in the provisions of the Code of Civil Procedure and the legislator accepts this fact, which is why it has introduced a system of reviewing judgments by ordinary and extraordinary means of appeal.[64] A recorded judgment is therefore a judgment that actually and legally exists. The institution of *sententia non existens* should only to situations in which the irregularities are not eliminated by available legal means, i.e. when all remedial mechanisms are not capable of eliminating the perceived deficiencies. Annulment of proceedings as an adequate remedial instrument is one such solution.[65]

Elimination of a Non-Existent Judgment from the Legal System

The legislator has not introduced any 'special' procedure for eliminating non-existent judgments from legal circulation.[66] A non-existent judgment does not have any legal effect, hence, as a rule, there is no need to set it aside or amend it in the course of an instance, as the non-existence of a judgment excludes the possibility of challenging it at all.[67] The judicature considers inadmissible an application to initiate proceedings for a declaration of non-existence of a judgment.[68] An action for determination under Article 189 of the Code of Civil Procedure is also inapplicable, since a non-existent judgment is not a legal relationship, nor does it have the form of law.[69] The consequence of the non-existence of a judgment is therefore the necessity to establish this fact on every procedural occasion (in this or any other case), as the provisions

[63] T. Zembrzuski, Nieważność..., p. 199.
[64] A. Góra-Błaszczykowska, *Nieistnienie*..., p. 187.
[65] T. Zembrzuski, Glosa..., *ibid.*
[66] According to A. Góra-Błaszczykowska (*Nieistnienie*..., pp. 187 and 188) is an additional argument in favour of narrowing the conceptual scope of a non-existent judgment. Since the legislator does not mention non-existent judgments in the provisions of the Code of Civil Procedure, it may mean that he did not provide for the possibility of the existence of such judgments at all. Consequently, in the Author's opinion, creating a catalogue of non-existent judgments or a general conceptual scope of non-existent judgments may have no normative basis.
[67] K. Korzan, *Wyroki*..., pp. 196 and 197.
[68] Decision of the Supreme Court of 26.7.2017, III CZ 25/17, Legalis.
[69] K. Korzan, *Wyroki*..., p. 197; Ł. Błaszczak, *Wybrane*..., p. 2.

of the Code of Civil Procedure do not provide for any specific procedure in this respect.[70] The non-existence of the judgment should be taken into account by the court at every stage of the case in which the judgment was issued, as well as in all other cases. Thus, this may involve rejecting an appeal against a non-existent judgment, refusing to give it an enforceability clause, or disregarding a plea of *res iudicata* arising from such a judgment. A party may also file a motion to open a closed hearing and continue the existing trial (Article 225 of the Code of Civil Procedure), as there is a procedural obstacle to the commencement of a new trial in the form of a *lis pendens*.[71] Since there is no judgment, the trial has not formally ended and a new lawsuit for the same claim is subject to dismissal, as the case between the same parties is still pending (Article 199 § 1 pt. 2 of the Code of Civil Procedure). In the case of a non-existent judgment rendered in non-existent proceedings, there are no formal obstacles to the initiation of new proper proceedings, as there is neither *res iudicata* nor *lis pendens*.[72]

A judgment which is factually non-existent in part, i.e. with regard to the lack of a decision on a part of the claim or on certain claims, may be rectified by means of a rectification measure, i.e. supplementing the judgment (Article 351 of the Code of Civil Procedure). On the other hand, a judgment in the part that does not actually exist may not be appealed, as it does not have a substrate (subject) of appeal. If such an appeal is lodged, it is subject to rejection due to its inadmissibility. In such a situation, a party may bring a new action, as *res iudicata* applies only to the existing decision.

Summary

The presented views of science as well as the position of jurisprudence confirm that the development of a uniform concept of non-existent sentences seems to be impossible. The complexity of the problem of *sententia non existens* and its legal significance requires, in my opinion, the intervention of the legislator. However, until legislative changes are made, a narrow position should be advocated, which allows for a precise definition of the classes of non-existent judgments, which include: a judgment rendered not by a court (and only in the formal sense); a judgment rendered in non-existent proceedings; judgment whose sentence has not been recorded (in any way) or a judgment that does not contain any decision. Such non-existent judgments have no legal effect and this fact should be taken into account by every court. On the other

[70] Decision of the Supreme Court of 26.7.2017, III CZ 25/17, Legalis.
[71] B. Bladowski, *Orzeczenia*..., pp. 79–85; E. Gapska, Wady..., s. 182; Ł. Błaszczak, *Orzeczenia*..., p. 29.
[72] E. Gapska, Wady..., *ibid.*; Ł. Błaszczak, *Orzeczenia*..., *ibid.*

hand, defects in the judgment in the form of failure to sign the judgment or to announce it may result in a qualified defect in the proceedings (nullity) allowing it to be challenged. Such a judgment exists as a factual event (it actually took place) as well as a legal event (it is a procedural act performed by the court).[73] However, such a judgment may be challenged only in accordance with the applicable regulations by way of an appeal, and the court of second instance or the Supreme Court hearing a cassation appeal should decide to overturn the challenged judgment so as to eliminate it from legal circulation. The admissibility of challenging such a defective judgment as non-existent at any stage of the case in which the judgment was issued, as well as in all other cases, undermines the security of legal transactions as well as the stability of court judgments. Adopting the concept of non-existent judgments to a large extent limits *de facto* the possibility to appeal against them (a non-existent judgment is not appealable, as one cannot appeal against 'something' that does not exist), thus the institution of appeals, which serve precisely the purpose of eliminating a defective judgment from legal circulation (a party may appeal against such a judgment, while against a non-existent judgment it cannot), would lose its significance.[74]

On the other hand, the possibility of declaring sentences issued with the participation of judges appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary shaped by the provisions of the Act[75] of 08.12.2017 as non-existent even threatens anarchy, which any 'non-tribal lawyer' trialist must not agree with.[76] The concept of *sententia non existens* should not be instrumentally used, and cases of non-existent judgments should be narrowed down to final situations, as 'issuing' such a judgment is an embarrassment to the judiciary and to the Republic of Poland as a state.[77] Undoubtedly, therefore, this institution should be of limited use in procedural law, as it is difficult to define and determine the scope of application of something that is not reflected in a clear legal norm.[78]

[73] K. Grzesiowski [in:] System..., A. Góra-Błaszczykowska, P. Osowy (eds), chapter 3, 284.
[74] A. Góra-Błaszczykowska, *Nieistnienie*..., p. 186.
[75] Dz.U. z 2018 r., poz. 3 ze zm.
[76] The notion of a 'non-tribal lawyer' was used by B. Pilitowski in an interview by G. Sroczynski entitled: 'Bodnar i fanatycy: 90 procent sędziów w głowę się puka', Gazeta.pl, 23.10.2024, https://wiadomosci.gazeta.pl/wiadomosci/7,114884,31405917,bodnar-i-fanatycy-90-procent-sedziow-w-glowe-sie-puka-wywiady.html [accessed: 01.11.2024].
[77] As aptly pointed out by K. Korzan (*Wyroki*..., p. 191) non-existent sentences are a pathological phenomenon. Whereas K. Markiewicz (*Problem*..., p. 117) rightly appealed that the scope of non-existent judgments should not be extended to cases that are not clearly supported by the law.
[78] T. Zembrzuski, Glosa..., p. 34.

***Sententia non existens*, czyli kolejny głos w dyskusji dotyczącej wyroków nieistniejących**

Abstrakt

Wyrok sądowy jest czynnością procesową wysoce sformalizowaną. Dopiero zachowanie wszystkich ustawowych wymagań warunkuje prawidłowość, czyli niewadliwość tej czynności. Zarówno uchybienia w procedurze wydania wyroku, jak i błędy w zakresie treści lub formy wyroku mogą być podstawą jego zaskarżenia lub rektyfikacji. W szczególnych sytuacjach wadliwości mogą być na tyle poważne, że w ogóle nie może być mowy o wyroku (***sententia non existens***). Kwestia wyroków nieistniejących od lat wywołuje w doktrynie i judykaturze liczne spory i kontrowersje, które na nowo odżyły ostatnio – i to ze wzmożoną siłą – z uwagi na orzecznictwo TSUE. Stąd też potrzeba zabrania głosu w tej niezwykle ważkiej dyskusji.

Słowa kluczowe: wyrok nieistniejący, *sententia non existens*, nieważność postępowania, wadliwość wyroku.

BIBLIOGRAPHY

Bladowski B., *Orzeczenia nieistniejące w cywilnym postępowaniu odwoławczym*, „Nowe Prawo" 1991, 1–3.

Błaszczak Ł., *Wybrane przypadki orzeczeń nieistniejących* (sententia non existens) *w procesie cywilnym na przykładzie orzecznictwa Sądu Najwyższego*, „Radca Prawny" 2012, 130, suppl.

Broniewicz W., Postępowanie cywilne w zarysie, Warszawa 1996.

Broniewicz W., Marciniak A., Kunicki I., Postępowanie cywilne w zarysie, Warszawa 2016.

Dostęp do ochrony prawnej w postępowaniu cywilnym, K. Flaga-Gieruszyńska, R. Flejszar, E. Marszałkowska-Krześ (eds), Warszawa 2021.

Ewolucja polskiego postępowania cywilnego wobec przemian politycznych, społecznych i gospodarczych. Materiały konferencyjne Ogólnopolskiego Zjazdu Katedr Postępowania Cywilnego, Szczecin–Niechorze, 28–30 września 2007, H. Dolecki, K. Flaga-Gieruszyńska (eds), Warszawa 2009.

Gapska E., Wady orzeczeń sądowych w postępowaniu cywilnym, Warszawa 2009.

Góra-Błaszczykowska A., Orzeczenia w procesie cywilnym. Komentarz do art. 316–366 k.p.c., Warszawa 2020.

Gudowski J., Iudex impurus (*sędzia skażony*). *Wyłączenie z mocy samej ustawy sędziego objętego zarzutem wadliwego powołania lub przejścia na wyższe stanowisko sędziowskie*, „Przegląd Sądowy" 2022, 5.

Hanausek S., Orzeczenie sądu rewizyjnego w procesie cywilnym, Warszawa 1966.

Hart H. L. A., Pojęcie prawa, tłum. J. Woleński, Warszawa 1998.

Jankowski J., *Wadliwa postać orzeczenia sądu I instancji w procesie cywilnym*, „Palestra" 1987, 12.

Konwencjonalne i formalne aspekty prawa. Studia i Materiały, S. Czepita (ed.), Szczecin 2006, 629.

Korzan K., *Wyroki nieistniejące*, „Przegląd Prawa i Administracji" 1976, 7, Acta UWr.

Markiewicz K., *Problem* sententia non existens *na tle orzecznictwa Sądu Najwyższego*, „Rejent" 2002, 11.

Miączyński A., *Faktyczne i prawne istnienie orzeczenia w sądowym postępowaniu cywilnym*, ZN UJ. Prace Prawnicze [Legal Works] 1972, 55.

Opinia Komisji Weneckiej z 14.10.2024, CDL-AD(2024)029; https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e [accessed: 01.11.2024].

Pietryga T., Dariusz Barski i nieuznany wyrok. Demokracja walcząca przeszła od słów do czynów, „Rzeczpospolita" 2024, Sept. 29, https://www.rp.pl/opinie-prawne/art41212301-tomasz-pietryga-dariusz-barski-i-nieuznany-wyrok-demokracja-walczaca-przeszla-od-slow-do-czynow [accessed: 01.11.2024].

Proces cywilny. Nauka–kodyfikacja–praktyka. Księga jubileuszowa dedykowana Profesorowi Feliksowi Zedlerowi, P. Grzegorczyk, K. Knoppek, M. Walasik (eds), Warszawa 2012.

Sawczuk M., Wznowienie postępowania cywilnego, Warszawa 1970.

Siedlecki W., *Czynności procesowe*, „Państwo i Prawo" 1951, 11.

Sroczyński G., wywiad z B. Pilitowskim, 'Bodnar i fanatycy: 90 procent sędziów w głowę się puka', Gazeta.pl, 23.10.2024, https://wiadomosci.gazeta.pl/wiadomosci/7,114884,31405917,bodnar-i-fanatycy-90-procent-sedziow-w-glowe-sie-puka-wywiady.html [accessed: 01.11.2024].

Stanowisko Kolegium NSA z 13.08.2024, https://www.nsa.gov.pl/ogloszenia/stanowisko-kolegium-naczelnego-sadu-administracyjnego-w-sprawie-statusu-asesorow-sadowych-w-wojewodzkich-sadach-administracyjnych,news,182,1079.php [accessed: 01.11.2024].

Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha, M. Jędrzejewska, T. Ereciński (eds), Warszawa 1985.

Symbolae Andreae Marciniak dedicatae. Księga jubileuszowa dedykowana Profesorowi Andrzejowi Marciniakowi, J. Jagieła, R. Kulski (eds), Warszawa 2022.

System postępowania cywilnego. Orzeczenia sądowe, tom 4, A. Góra-Błaszczykowska, P. Osowy (eds), Warszawa 2025.

System prawa procesowego cywilnego. Postępowanie rozpoznawcze przed sądami pierwszej instancji, tom 2, Z. Resich (ed.), Warszawa 1987.

Wokół problematyki orzeczeń, Ł. Błaszczak (ed.), Toruń 2007.

Zaradkiewicz K., *Abusive Constitutionalism in Poland: On the self-delegitimisation of the judiciary*, JoMS 2024, 59 (special issue 5).

Zedler F., Glosa do uchwały SN z 07.02.1997, III CZP 125/96, OSP 1997/12/225.

Zembrzuski T., Nieważność postępowania w procesie cywilnym, Warszawa 2017.

Zembrzuski T., Glosa do postanowienia SN z 31.08.2018, I CSK 300/18, OSP 2019/04.