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ON THE POWER OF JUDGE'S ASSISTANTS TO ISSUE ORDERS – COMMENTS PURSUANT TO ARTICLE 47(2) OF THE CODE OF CIVIL PROCEDURE¹

O UPRAWNIENIU ASYSTENTÓW SĘDZIÓW DO WYDAWANIA ZARZĄDZEŃ – UWAGI NA GRUNCIE ART. 47(2) K.P.C.

Summary: The judge's assistant is a lawyer who prepares-proposals for the judge and helps them in the process of organising their work. Due to a change in the civil procedural rules, they are now able to issue certain types of orders. In my paper, I would like to try to answer the question of what type of cases such orders may be issued in, as well as to assess the future consequences of the change in law. The key question also arises; should judge's assistants be able to issue such orders? Should it not be reserved for judges only?

Keywords: judge's assistant; order, civil procedure

Streszczenie: Asystent sędziego jest osobą, która przygotowuje propozycje dla sędziego i pomaga mu w organizacji pracy. Z uwagi na zmianę w przepisach postępowania cywilnego asystenci sędziów mogą obecnie wydawać niektóre rodzaje zarządzeń. W artykule podjęto próbę odpowiedzi na pytanie, w jakich rodzajach spraw takie zarządzenia mogą być wydawane, a także ocenić przyszłe konsekwencje zmiany w prawie. Powstaje też kluczowe pytanie: czy asystenci sędziego powinni móc wydawać takie zarządzenia? Czy nie powinno być to zastrzeżone tylko dla sędziów?

Słowa kluczowe: asystent sędziego, zarządzenie, proces cywilny

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Recently, among the representatives of civil law science and practitioners dominate discussions regarding amendments to the Code of Civil Procedure, which entered into force on November 7, 2019 due to the Act of July 4, 2019 amending the Act – Code of Civil Procedure and some other acts (Journal of Laws 2019, 1469). However, it is also worth focusing on the Act of August 30, 2019 amending the Act – Bankruptcy Law and some other acts (Journal of Laws 2019.1802), pursuant to which the art. 47 (2) was added to the Code of Civil Procedure of October 8, 2019 – granting judge's assistants the power to issue orders.

This provision is an innovative solution, because so far judge's assistants did not have any statutory competence to issue orders in civil proceedings. Their role was to design judgments or ordinances and their justifications. However, these were not independent procedural steps taken by judge's assistants but only the support they gave to judges. Ultimately, it was the judges who decided whether the draft prepared by the assistant was subject to signing (and then it became effective, however, as a court or court chairman's legal action), or it was subjected to changes or even not used at all². It is not without reason seen in the literature that judge's assistants work as *ghostwriters*³. Sometimes, when assisting judges, when preparing draft rulings, they disclose their personal data as recorders in presentation of the parties, however most often their participation in the preparation of a given activity is not externalized in any way.

Process solution introduced in art. 47 (2) of the Code of Civil Procedure is not a revolution that would radically change the constitutional position of judge's assistants, as they still remain primarily judge's assistants in their daily work⁴, they nevertheless gain, to a limited extent, judicial independence becoming a kind of procedural body within these limits.

The idea that the legislator had when introducing art. 47 (2) of the Code of Civil Procedure seems clear. On the one hand, the provision is a response to the postulates of a part of the legal community to expand the powers of judge's assistants, in particular in terms of empowering them to issue orders in simple cases, e.g. in respect of calls for formal shortcomings in a pleading⁵. The second purpose of the regulation is to strive to relieve judges of the obligation to take those procedural steps in a case that do not require the personal involvement of a judge, and thus in

² Ł. Kurnicki, *Strukturalne przyczyny przewlekłości postępowań sądowych na przykładzie spraw cywilnych*, „Krajowa Rada Sądownictwa” 2016, No. 1, p. 17.

³ E. Łętowska, K. Pawłowski, *Gorzkie owoce ze szkoły Hesperyd*, [in:] *O prawie i o mitach*, LEX, Warszawa 2013, p. 217.

⁴ See K. Joński, *Institucja asystenta a efektywność pracy sędziego – analiza pionów karnego i cywilnego pierwszej instancji sądów okręgowych*, Warszawa 2017, p. 10.

⁵ M. Klonowski, *Kierunki zmian postępowania cywilnego w projekcie Ministra Sprawiedliwości ustawy o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw z 27.11.2017 r. – podstawowe założenia, przegląd proponowanych rozwiązań oraz ich ocena*, „Polski Proces Cywilny” 2018, No. 2, p. 101; C. Dzierzbicki, *Zasada rzetelności i postulat szybkości w sprawach dotyczących nieruchomości w postępowaniu nieprocesowym*, „Polski Proces Cywilny” 2018, No. 3, p. 101.

particular to issue small technical decisions. It can be initially assumed that if this regulation is used in an optimal way, it may affect the process of improving long-term court proceedings, this may affect the process of improving long-term court proceedings, although of course a more precise answer to the question whether (and if so, to what extent) art. 47 (2) of the Code of Civil Procedure it is important for the practical reduction of the duration of court proceedings, it will be possible to grant it only after a certain period of functioning of this provision in practice.

Against this background, two basic questions should be asked. First, whether the judge's assistant should indeed have the power to issue orders independently. Secondly, can the solution improve the way the courts operate, especially on the basis of the practical principles of cooperation between judges and judicial assistants.

Considerations in the subject matter should begin with analyzing the key issue: was it allowed to equip judge's assistants with the right to issue orders independently? There is no doubt that the judge's assistant, even the best qualified does not have jurisdiction to empower him to decide the matter as to its substance. Therefore, it requires consideration whether the competence to issue orders in the course of proceedings should not however, remain limited only to judges, deputy judges and legal secretaries, i.e. those entities that conduct proceedings and are entitled to make substantive decisions therein. The point is that civil procedure (like any other procedure before public authorities) is not an end in itself. By its very nature, it is to lead to the substantive resolution of the case submitted to the court's judgment, or to declare that it is impossible or inadmissible, which leads to the formal termination of this proceeding. Thus, making procedural decisions serves to ensure that the entity, which will bear the burden of examining the case as to its essence, in an appropriate manner - determined by legal process norms - leads to a state in which there are legal grounds for issuing the final decision. Is the making of independent procedural decisions, even small ones, by a procedural body which is not a „adjudicator” as to the substance of the case, really the optimal solution and does such a solution comply with the main procedural and constitutional principles?

The answer to this question appears to be fundamental, as the provisions of the Code of Civil Procedure are a kind of public law, which requires them to be shaped so as to correspond with systemic regulations regulating the functioning of state organs⁶. The above question raises another: does the judge's assistant, when issuing an ordinance under the discussed provision, actually act independently of the judge, or is he issuing the ordinance in fact executing the order of the judge? The answer to this issue must, however, consistently lead to considerations on how the legal and procedural relationship between the judge (court) and the judge's assistant should be shaped *in de lege lata*.

⁶ T. Ereciński, *O uwarunkowaniach, potrzebie oraz zakresie nowego kodeksu postępowania cywilnego*, „Polski Proces Cywilny” 2010, No. 1, p. 12.

TASKS OF JUDGE'S ASSISTANT

Pursuant to art. 155 § 1 of the Act of 27 July 2001 Law on the System of Common Courts (consolidated text, Journal of Laws of 2019, item 52, as amended, hereinafter called u.s.p.), the judge's assistant performs activities aimed at preparing court cases for examination and activities related to administrative activities of courts. The scope of competence of judge's assistant was detailed in the Regulation of the Minister of Justice of 8 November 2012 on the activities of judge's assistant (Journal of Laws 2012.1270). § 2 item 1 of the Regulation provides that, on the order of the judge and under his direction, the judge's assistant prepares draft orders, rulings or their justifications. At the same time, § 2 item 2 of the ordinance specifies the scope of cases which, on the order of the judge, may be prepared independently by the judge's assistant. These activities include: analyzing case files in the indicated scope, controlling the status of deferred, suspended or pending actions by a judge or a court, asking persons and institutions to send information or documents necessary to prepare a case for examination, preparing responses to letters which are not procedural documents and collection in the indicated scope, case law and literature useful for hearing cases or performing other tasks entrusted to judges in a given department. On the other hand, pursuant to § 2 (3) of the Regulation, in justified cases if required by the principles of efficiency, rationality or economic and rapid action, the judge may also order the assistant to perform other activities necessary to prepare court cases for examination.

In judicial practice, judge's assistants usually prepare draft judgments commissioned to them by judges and their justifications, basically based on the judges' suggestions on how to prepare a specific project. However, there are also situations in which judge's assistants prepare draft judgments or justifications without specific guidelines, thus in a way „creatively” deciding on the shape of the designed activity.

ORDERS OF JUDGE'S ASSISTANTS

However, even before the entry into force of Art. 47 (2) of the Code of Civil Procedure literature has expressed the view that an assistant to a judge may issue ordinances independently, while the legal basis for this competence was found in art. 155 act in connection with the provisions of the Regulation on the activities of assistants⁷. Nevertheless, the view dominating in judicial practice was that judge's assistants could not issue any ordinances, as there was no clear legal basis in this matter in the provisions of the Code of Civil Procedure. Until the entry into force of art. 47 (2) of the Code of Civil Procedure therefore, judge's assistant prepared (as in the case of judgments and justifications) only their projects, which were then evaluated by the reporting judges. Accept-

⁷ O.M. Piaskowska, K. Sadowski [in:] K. Sadowski et al., *Metodyka pracy asystenta sędziego*, Warszawa 2011, p. 263-264.

ance of the draft ordinance and, as a consequence, its signing (without changes or after their introduction), or lack thereof, belonged only to the judge⁸. Changes to the drafts were sometimes made by the judges in person, but often the assistants were instructed to make appropriate modifications to the original draft. However, without the judge's signature, the draft prepared by the judge's assistant had no procedural significance, it was only his „proposal” for the judge⁹.

Based on art. 47 (2) § 1 of the Code of Civil Procedure in terms of actions of the chairman, the orders may also be issued by a judge's assistant, with the exception of an order to return a pleading, including a suit. In any case, the chairman may revoke or amend the assistant's order. In accordance with art. 47 (2) § 2 of the Code of Civil Procedure within a week of the date of delivery to the side of the order of the judge's assistant on a call to pay a fee, with information about the date and manner of raising an objection, the party may object to the order of the judge's assistant on a call to pay a fee. The objection should contain an indication of the contested order. The objection does not require justification. At the same time, according to art. 47 (2) § 3 of the Code of Civil Procedure in the event of an objection, the order of the judge's assistant to call for payment shall cease to be effective. An objection raised after the deadline or not meeting the formal conditions of the pleading does not produce effects and is left without recognition, without calling for its correction or supplement. In this case, the chairman *ex officio* examines the correctness of the order of the judge's assistant.

On the basis of art. 47 (2) of the Code of Civil Procedure judge's assistants therefore have the express authority to issue orders in civil matters regarding the activities of the chairman. However, this competence is not unlimited. The entitlement for judge's assistants does not include the possibility of issuing orders for the return of a pleading (including a claim). At the same time, the orders of the judge's assistant are not absolutely binding. The chairman may at any time revoke or amend the order issued by the judge's assistant. If, however, the order issued concerned the issue of summoning a party to pay a fee, the party may submit an objection to the order, and the present – unknown to the civil proceedings – appeal lodged on time and in the appropriate form will make the challenged order of the judge's assistant lapse (Article 47 (2) § 3 of the Code of Civil Procedure).

PROCEDURAL POSITION OF JUDGE'S ASSISTANTS

While it is beyond doubt *de lege lata* that the legislator allows independent orders to be issued by judge's assistants, consideration should be given to how this regulation corresponds to the main procedural rules and the need to provide guarantees in the exercise of the parties' right to court. The analyzed provision was placed in the provisions of

⁸ Ł. Kurnicki, *Strukturalne...*, p. 17.

⁹ See O.M. Piaskowska, K. Sadowski [in:] K. Sadowski et al., *Metodyka...*, p. 204.

the Code of Civil Procedure on the composition of the court, next to art. 47 of the Code of Civil Procedure, regulating the issue of the composition of the court in the court of first instance, and art. 47 (1) of the Code of Civil Procedure, referring to the competence of legal secretaries in civil proceedings. An interpretation of the codex systematics could therefore suggest that, in the case of issuing orders, a judge's assistant is an independent procedural body operating within the limits of the chairman's powers.

However, it should be noted that in art. 2 § 1 of the Law of the System of Common Courts it is specified that tasks in the field of justice are performed by judges, and moreover in art. 2 § 1a, it was assumed that in district courts these tasks are also performed by court assessors. From art. 2 § 2 of the Law of the System of Common Courts it follows that tasks in the field of legal protection, other than justice, are performed in court by legal secretaries and senior legal secretaries. However, the legislator does not indicate that tasks falling within the scope of justice or the scope of legal protection may be carried out by judge's assistants. From the aforementioned art. 155 § 1 of the Law of the System of Common Courts however, it follows in particular that the judge's assistant performs activities aimed at preparing court cases for examination and activities within the scope of administrative activities of courts.

Issuing orders in the course of civil proceedings is undoubtedly an act aimed at preparing a case for examination. It is not, of course, the same as hearing the case. *Ratio* of issuing orders is giving the matter a formal course, so that it can be brought to a state in which it can be resolved substantively (or state that for certain reasons it is impossible). In particular, „internal” ordinances are clearly „preparatory” in nature, directed to employees of the office (e.g. regarding the attachment of files to another proceeding, payment of the amount due awarded to an expert, etc.), but the above also applies to a number of directives addressed directly to the parties (e.g. on requests to make up for the deficiencies in formal pleadings). If a judge's assistant issues an order justified by the circumstances, which is addressed to a party or their legal representative, undoubtedly his main goal is to prepare the case for hearing. In this sense, therefore, the right of a judge's assistant to issue orders is a breach in the judicial leadership model of proceedings in formal matters¹⁰.

On the other hand, the legislator assumed that any order issued independently by a judge's assistant may be revoked at any time by the presiding judge. Therefore, the judge remains the entity who conducts the proceedings and has the obligation to ensure the proper course of the proceedings. The assistant, despite some independence, therefore still has only an auxiliary role here.

Notwithstanding the above, the subject limitation, preventing the issuing of orders to judge's assistants on the return of procedural documents, as well as the possibility of causing the order to lose its power by even a general objection, supports

¹⁰ A. Łazarska, *Sędziowskie kierownictwo postępowaniem*, „Przegląd Sądowy” 2012, No. 5, p. 54.

the assessment that the role of judge's assistants is not to make procedural decisions that cause the most serious procedural effects for parties.

All these circumstances lead to the conclusion that the power granted to judge's assistants to issue independent orders, within such limits as is the case under art. 47 (2) of the Code of Civil Procedure, falls within the systemic framework regulating the functioning of the common judiciary.

However, consideration also needs to be given to whether the authorization of judge's assistants to undertake independent procedural steps, to a certain extent influencing the course of proceedings, does not involve a violation of basic procedural principles. This is important especially because the judge's assistant does not enjoy the attribute of independence. In my opinion, allowing judge's assistants to take legal action on their own behalf does not conflict with constitutional guarantees to ensure that the case is examined by an independent court. The issuing of orders by judge's assistants is not, as has already been mentioned, an element of the administration of justice in *sensu stricto*. An assistant issuing an order does not recognize the case as such, but only gives it a certain procedural course to a limited extent. Therefore, this solution should be treated only in terms of allowing the possibility of deducting certain obligations related to the technical side of the proceedings to judges (assessors). As has already been mentioned, the issuing of ordinances by judge's assistants that could seriously affect the situation of the parties was either eliminated completely (such as issues of returning pleadings), or subject to an appeal resulting in the loss of power by such an order (as is the case with requests for payment of a fee). Any assistant's order may also be revoked or amended by the judge at any time. That is why I do not perceive art. 47 (2) of the Code of Civil Procedure as a regulation conflicting with the main principles of the civil proceedings, or as constitutional guarantees of exercising the right of the court. The issuing of an ordinance by a judge's assistant does not mean that he exercises justice or undertakes legal protection activities. Undoubtedly, issuing orders cannot be treated as an element of „judging”¹¹. After all, the ordinances constitute a procedural category separate from judgments, and one cannot compare competences to issue orders to make decisions constituting the essence of the judiciary, i.e. judgment.

INDEPENDENCE OF JUDGE'S ASSISTANT

However, the issues raised make it necessary to consider the matter of actual independence – the independence of the judge's assistant issuing an ordinance under the discussed provision.

Thus: can the judge's assistant, without consulting the presiding judge, „freely” or „discretely” issue orders in specific proceedings, or the provision of Art. 47 (2)

¹¹ See also: A. Łazarska, *Rzeczelny proces cywilny*, Warszawa 2012, p. 170-178.

of the Code of Civil Procedure only applies to cases where the judge orders that the case file be forwarded to the judge's assistant for his specific orders?

From the literal wording of art. 47 (2) of the Code of Civil Procedure it follows that the assistant issues orders, which justifies the thesis that he can decide on the issue of orders in conducted cases freely and independently. The provision does not indicate that the order of the judge's assistant could be issued only „on the instructions of the chairman” or „with the consent of the chairman”. Thus, it should be recognized that the judge's assistant has the legal competence to decide independently which order to issue. Thus, the judge's assistant is formally independent in the sphere of making decisions or issuing the order at all, as well as in terms of the substantive content of the order and its editorial.

Therefore, if the judge's assistant analyzes specific files and sees the need to issue specific orders, he has legally the opportunity to make such a procedural decision himself. For example, a judge's assistant analyzing the content of a lawsuit, may issue an order summoning the plaintiff to supplement the enumeration of formal defects indicated in the lawsuit within one week under pain of returning the lawsuit. This situation may occur, in particular, when the judge's assistant receives a file to take steps to settle the case (and thus, in fact, being free to take legal action). It may also turn out that the judge's assistant will receive a file to prepare a specific draft decision (e.g. a draft decision on an application for securing a claim), but by examining this issue he will notice the formal shortcomings of the claim. Then the assistant can of course prepare the draft judgment (according to the judge's instructions); however, he may also, on his own initiative, issue his own order to summon the plaintiff to rectify formal defects within a week, under pain of returning the claim.

However, the question arises, which of these activities would be appropriate? It seems that if the files are referred by the judge's assistant in order to prepare a specific draft judgment, and in the assistant's view there are no grounds for it, then he should first consult the judge directly. A judge's assistant should not arbitrarily decide on legal proceedings if he has received a file from a judge to carry out a specific project. Only after consulting the judge could the assistant issue his „own” order – if the presiding judge were in favor of his idea¹². On the other hand, the case in which the judge's assistant had received the order to „take action in the case” should be assessed differently. In such a case, it must be recognized that there is no obstacle for the judge's assistant to take such actions as he deems adequate at a given stage of court proceedings, including issuing relevant orders.

It is also worth considering whether the judge may prohibit the judge's assistant from issuing orders independently, even if the assistant would consider it appropriate to issue such orders on his own. Pragmatic considerations and functional

¹² K. Sadowski [in:] K. Sadowski et al., *Metodyka...*, p. 84.

interpretation of art. 47 (2) of the Code of Civil Procedure speak in favor of the recognition that if the presiding judge objects to the judge's assistant deciding on the issuing of orders by himself, his decision in this regard is binding on the assistant. This is due to the fact that the assistant acts within the competence of the chairman, and in addition the legislator has explicitly decided that any order of an judge's assistant may be subject to annulment or amendment by the chairman. The legislator assumed that the assistant's orders may constitute assistance for a judge; however, they cannot determine the direction of the proceedings in which they are to be conducted only because the assistant has become „active” in the case.

It also seems expedient to reverse the perspective and consider whether the judge's assistant may be obliged by the judge to issue under art. 47 (2) of the Code of Civil Procedure i.e. in his own name, an order with the content specified by the judge, in the event that, according to the assistant, such an order was not correct. The answer to this question depends on the resolution of the following question: is the judge's assistant independent of the judge or is the assistant issuing orders under art. 47 (2) of the Code of Civil Procedure the executor of the judge's instructions. There are no regulations that would explicitly provide that judge's assistants in the scope of their duties are independent as to the content of issued orders specified in statutes. It should be noted that while in the case of legal secretaries, the provisions of art. 151 of the Law of the System of Common Courts, pursuant to which, in the scope of performed duties, the legal secretary is independent as to the content of issued judgments and ordinances specified in statutes. Since *de lege lata* the legislator did not create a similar regulation regarding judicial assistants, it should be considered that this „judge helper” is dependent on the judge, so the judge can theoretically issue a binding order to the judge's assistant to issue a specific order based on art. 47 (2) of the Code of Civil Procedure. In this case, however, it should be assumed that if the judge's assistant refused to issue a specific order on his own behalf ordered by the judge, he should inform the judge or the president of the court in writing (cf. Article 7 (1) and 2 of the Act of December 18, 1998 on employees of courts and prosecutor's office)¹³, possibly demand that the judge instruct him to issue a specific order in writing (art. 79 *in fine* and art. 106zc *in fine* the Law of the System of Common courts *per analogiam*).

The „independence” of assistants is therefore practically limited due to service and procedural subordination to judges. In the literature before the entry into force of art. 47 (2) of the Code of Civil Procedure it was explicitly pointed out that „*the judge's assistant is not independent and there is no need for independence because he does not sign up to any of his activities*”¹⁴. *De lege lata*, although the judge's assistant signs (may sign) some ordinances, he is still not completely independent. The right of assistants

¹³ Ibidem, p. 81-83.

¹⁴ M. Paczyńska, *Status asystenta sędziego – wyzwania i dylematy w świetle zmian ustawy Prawo o ustroju sądów powszechnych*, „Przegląd Prawa Konstytucyjnego” 2014, No. 1, p. 212.

to issue ordinances on their own behalf was *de facto* introduced into the civil procedure not to strengthen the political position of the assistant, but to improve the operation of the courts and relieve judges from the excess of *stricte* non-judicial obligations.

PRACTICAL REMARKS

Since the issuing of orders by judge's assistants is admissible and does not conflict with the main political and procedural principles, it is worth considering a practical question - what type of ordinance can the judge's assistant actually issue.

The Act does not provide for any closed catalog of orders that may be drawn up by judge's assistants. The analysis of the provisions concerning only the legal procedure in the first instance proceedings indicates that the orders of the judge's assistant may include in particular:

- summoning the party to make up for the lack of formal and fiscal lawsuit (article 130 § 1 and 130 § 1 (1) of the Code of Civil Procedure),
- summoning the party to correct the letter submitted on the official form (article 130 (1) § 1 (1) of the Code of Civil Procedure),
- summoning the party to pay the fee due (article 130 (3) § 2 of the Code of Civil Procedure),
- appointing a probation officer for a person of unknown place of stay (article 144 of the Code of Civil Procedure),
- delivery of a copy of the statement of claim to the defendant (article 205 (1) § 1 of the Code of Civil Procedure).

Judge's assistants also have the power to issue ordinances that do not arise directly from the provisions of the Code, but relate to strictly organizational matters, such as ordinance regarding the attachment of files of other proceedings, determination of specific data in the repertory, requesting information, etc.

There are also no grounds for accepting that orders of judge's assistants may not be issued in matters covered by statutes other than the Code of Civil Procedure, e.g. reimbursement of court fees (article 79 and Article 80 of the Act on Court Fees in Civil Cases u. k. s. c.).

Art. 47 (2) the Code of Civil Procedure does not limit the competence of the judge's assistant to issue orders only in the court of first instance. This regulation may be applied if the orders are issued by the Chairmen in the Court of Appeal. Assistants may also issue orders regarding cases pending before the Supreme Court. In particular, a judge's assistant may issue orders in inter-instance proceedings. These ordinances may relate to e.g. to summoning the party to make up for the lack of formal and fiscal lawsuit (article 373 § 1 of the Code of Civil Procedure), summoning the applicant to supplement the deficiencies of the cassation appeal (article 398 (6) of the Code of Civil Procedure), summoning for the correction or supplementation

of the complaint for a declaration of unlawfulness of a final judgment (article 424 (6) of the Code of Civil Procedure).

It seems that art. 47 (2) of the Code of Civil Procedure it will be most often used if the judge decides to present specific files to the assistant so that he could prepare the orders under this provision. It should be assumed that judges can strive to improve their work by commissioning assistants to issue specific orders. However, this will probably be a practice limited to those cases where the judges show considerable confidence in the judge's assistant.

This solution can be used in cases of prolonged absence of a judge who asks the assistant to make specific orders during his absence. For example, a judge when going on a longer vacation may instruct an assistant to issue specific orders in specific acts. Orders (e.g. regarding summons to supplement formal deficiencies in procedural documents, appointment of a hearing) could be issued by judge's assistants during the leave or sick leave of the judge, so that the judge can return to other matters after returning to work. This could improve the organization of justice. However, it is necessary for the judge to work out a specific „reasonable” model of cooperation with the assistant. It depends on the human factor to a large extent whether the solution provided for in art. 47 (2) of the Code of Civil Procedure will prove to be only an illusory „substitute for help” in the fight against protracted trials, or a serious weapon used for the good of proceedings.

It seems that when the judge is not on longer sick leave or vacation, judge's assistants should not issue orders „arbitrarily”. Then the basis for good cooperation between the judge and the assistant should be that the assistant consults the judge with ideas on how to take the matter. This practice will eliminate (or at least reduce) situations in which a judge's assistant could issue an order that is incorrect or does not match the judge's concept. On the other hand, when deciding to instruct an assistant to issue an independent order, the judge should send a general instruction to the assistant, indicating what the order issued under Art. 47 (2) of the Code of Civil Procedure concerns. For example „submit files to an assistant to issue an order establishing a probation officer for a defendant of an unknown place of stay in the person of the lawyer indicated in the letter from the District Bar Council”.

The order, which the assistant prepares himself, may be revoked or amended by the judge at any time. Therefore, if the order does not take into account comments submitted by the judge to the assistant or was issued without such consultation, the judge may modify them at will. Of course, practical difficulty may arise if the assistant's order issued under art. 47 (2) of the Code of Civil Procedure will be carried out by a secretary before a judge amends it. At that time, the order had already been set in motion: the relevant letter constituting the implementation of the assistant's order would go to the parties / proxies / bodies. In such a situation, if the chairman deems it appropriate to amend the order issued by the judge's assistant, he should clearly

state in his next order that the previous order has been repealed. If such a letter would be addressed to a party acting alone (without a legal representative in the person of a lawyer or legal advisor), it is worth clearly providing information that the assistant's repealed order is not enforceable, and other obligations are imposed on the party. Such a situation could take place, for example, if the judge's assistant of the ordered a summons to remove the formal shortcomings of the letter, stating the defective rigor.

The question arises whether the chairman may amend or revoke the assistant's order after the final termination of the proceedings. It seems that the answer to this question should be affirmative. However, such interference in orders not relevant after the end of the proceedings would be pointless. However, if the judge's assistant issued a defective order to record the validity of the ruling (whether in the event that the ruling did not become final, or in the event of an incorrect date of validity being marked), such an order may and should be subject to amendment or revocation by the chairman.

CONCLUSION

In my opinion, the legislator rightly allowed the possibility of submitting a fragment of the judge's procedural scope in the form of issuing orders for the competence of judges' assistants. The model of court proceedings, in which the judge's assistant can make certain procedural decisions independently by issuing orders seems to be right, since thanks to this there is a „diversification” of some of the tasks incumbent on judges, assessors and legal secretaries. Expanding the scope of competence of judge's assistants may contribute to relieving judges of the need to take certain actions that do not constitute the essence of the administration of justice, and therefore may also be carried out by entities other than judges or assessors.

In the assumption the art. 47 (2) of the Code of Civil Procedure aims to contribute to the improvement of processes, which is right from the point of view of the right to a court and the right to hear the case without undue delay. Since the optimal model is considered to be „a model of proceedings ensuring legal protection without undue delay, after an open hearing of the case, while ensuring the possibility of two-stage proceedings, meeting the criteria of fair consideration of the case (article 45 paragraph 1 and Article 179 paragraph 1 of the Constitution)”¹⁵, it should be recognized that art. 47 (2) of the Code of Civil Procedure is part of this concept.

Literature has expressed the view that “the position of judge's assistant creates a good and even a very good atmosphere for bolder intellectual thoughts”¹⁶, which is associated with the fact that the effect of his work is controlled by the judge. Regulation of Art. 47 (2) of the Code of Civil Procedure is part of this view. Even if the judge's assistant would

¹⁵ K. Weitz, *Czy nowa kodyfikacja postępowania cywilnego*, „Państwo i Prawo” 2007, No. 3, p. 20.

¹⁶ G. Karcz, „Przedsąd referendarski” *alternatywą dla koncepcji „sędziego grodzkiego”*. *Zarys modelu i zasad funkcjonowania*, „Krajowa Rada Sądownictwa” 2008, No. 1, p. 66.

make an independent decision and issue an order without consulting the judge, the effect of his work could still be effectively challenged at any time by the judge. The order of the judge's assistant therefore has an „uncertain life” since it can be repealed by the judge at any time. From the procedural point of view, the judge's assistant is therefore *de lege lata* a partially autonomous procedural body, although he is not fully independent. The judge remains the entity responsible for conducting the proceedings.

Undoubtedly, the courts should function efficiently and the judges should organize their work in such a way that they are responsible for the cases assigned to them without undue delay. However, one cannot uncritically approve of any solution that contributes to the acceleration of court proceedings, if this would involve a violation of established procedural and political rules. The speed of proceedings is not the most important value that must be strictly implemented at the expense of other procedural rules¹⁷. The regulation included in art. 47 (2) of the Code of Civil Procedure may work in court practice if, in principle, judges' assistants will issue their own orders only after consulting (even verbally) with the judge, thanks to which the judge will not be surprised by the idea of his colleague¹⁸. In fact, it will depend on developing a good model of cooperation between the judge and judge's assistant whether art. 47 (2) of the Code of Civil Procedure will fulfill the hopes placed in it, or will prove to be only an excuse to „push” the files from the judge's office to the assistant's office.

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¹⁷ See K. Flaga-Gieruszyńska, *Szybkość, sprawność i efektywność postępowania cywilnego – zagadnienia podstawowe*, „Zeszyty Naukowe KUL” 2017, No. 3, p. 6.

¹⁸ O.M. Piaskowska, K. Sadowski [in:] K. Sadowski et al., *Metodyka...*, pp. 205, 212.

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