

## **Review of cases where the Polish Supreme Court ruled as to resumptions by way of a cassation**

*There have been several precedent cases where the Supreme Court of the Republic of Poland allowed cassations in cases initiated by a complaint for resumption.*

*Below these cases have been commented so as to make it obvious that they were cases of another type and that — consequently — there is no alternative case law which would enable Piotr Niżyński to bring a cassation. On the other hand, in fact more than 10 decisions of the Supreme Court have already declared cassations inadmissible in such cases as Piotr Niżyński's one.*

**IV CSK 9/07** – concerned a case commenced by an application for declaring bankruptcy, which was therefore a non-litigious proceeding as covered by book two of the Polish Code of Civil Procedure. According to the said Code of Civil Procedure (Article 13 §2) regulations about trial/litigious proceedings are applied accordingly in other types of proceedings, unless the law forbids it. This was one ground for a complaint for resumption, another was Article 524 §1 of the Code of Civil Procedure. In such cases, i.e. non-litigious ones, regulations of Article 398(1) §1 as to cassations to the Supreme Court are superseded by those of Article 519(1) §1, which are *lex specialis*. Article 519(1) §1 introduces broader grounds for cassations than Article 398(1) §1 does: all decisions as to the essence of the matter are subject to cassation. Therefore, in this particular case a cassation was admissible despite the fact that it was about a dismissal of an interlocutory appeal within a complaint for resumption.

**V CSK 155/07** – again, concerned a non-litigious proceeding about a division of common wealth of spouses (cf. Article 519(1) §2 as an example that the particular law was applicable here).

**V CSK 338/08** – the case for resumption was ended with a sentence. Civil sentences are always subject to cassations if there is a particular ground for that (some restrictions always apply, but not those at issue in my case).

**III CSK 180/11** – the case for resumption concerned non-litigious proceedings (book II of the Code of Civil Procedure) and thus the cassation was subject to regulations as to such proceedings.

**II CSK 73/13** – again, a non-litigious proceeding described in book II of the Code of Civil Procedure.

**I CSK 146/13** – the case for resumption was ended with a sentence, thus a cassation was possible.

**III CSK 332/13** – the cassation was about a decision of a second instance court in the matter of, amongst others, rejection of a writ. The second instance court at the same time agreed to resume the proceeding and ruled that the writ covered by the resumption should be rejected. It is normal that judgments as to the essence of the resumed matter are issued within a case for resumption (it is the only possible way). Therefore, the Supreme Court found out that he had a jurisdiction in this case, just as he would have in the very initial case subjected to resumption.