



Litigation & Dispute Resolution

Third Edition

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Poland

Dr. Barbara Jelonek-Jarco & Agnieszka Trzaska
KKG Kubas Kos Gaertner

Efficiency of process

When compared to other European countries, the effectiveness of court proceedings in Poland should be assessed positively and further improvements in this field can be expected in the coming years. Recent amendments to the civil procedure (particularly the amendment which entered into force on 2 May 2012) have been oriented towards guaranteeing an improved and more effective course of the proceedings.

Changes to the provisions which introduced the principle of concentration of procedural material, supplemented by the principle of the judge's discretionary authority, have "equipped" courts with instruments ensuring efficient and fast conduct of proceedings – not only must the judge act as an arbitrator in the dispute between the parties, but he must also be a manager of the proceedings, who should counteract any attempts to prolong the proceedings and aim for the quickest possible settlement of the dispute, obviously without detriment to resolution of the case. At the same time, the legislator obliged the parties to invoke all factual circumstances and evidence that is relevant for the case without delay (in the case of the party initiating the proceedings, this should be done already in the statement of claims or in the motion initiating the proceedings in the case). The court shall omit any late statements and motions as to evidence made by the parties; this, however, does not pertain to cases where the party is not culpable for presenting such circumstances or evidence at a later date, or when allowing them by the court will not delay examination of the case. Neither does it pertain to cases where exceptional circumstances occur (it is the court that decides whether such circumstances occur or not).

Although Polish rules of civil procedure undoubtedly facilitate fast and efficient conduct of the proceedings, nevertheless in practice a lot depends on the "managerial skills" of the judge who is hearing the case, and to the same degree on the parties and their counsels.

Since 2010, the group proceedings institution – a mechanism for collective pursuit of claims of multiple entities – has become one of the elements of the Polish procedural system, aimed at improving access to court and, in concept, guaranteeing higher effectiveness of judicial protection. A collective action, simply speaking, is a Polish version of the American class action adapted to requirements of the continental law. It is based on the so-called opt-in model (i.e. it extends to those members of the group who explicitly express their desire to participate in group proceedings by filing of the so-called declaration on joining the group) and on the representation principle. Its aim is a collective, joint pursuit of identical or the same claims put forth by multiple entities.

Increasing digitisation bears huge significance for effectiveness of court proceedings. In 2011, an e-minutes institution was introduced – in courts equipped with adequate hardware and software, the course of court sessions is recorded exclusively in audio or video formats. Moreover, electronic information portals have been created or are presently under construction for areas under jurisdiction of particular courts of appeals. An information portal is a tool that enables parties or their counsels to obtain information regarding the case in which they

participate (information related to the status of the case as well as actions taken in the case by court – orders, decisions issued, etc., pleadings lodged in court by the other party). Furthermore, it allows documents drafted by the court in the case to be obtained in electronic format (outbound correspondence, judgments, decisions, substantiations, minutes from hearings). Currently, obtaining documents by a party or its attorney via a portal does not have the effect of service of documents (but in assumption, electronic access is to replace the institution of traditional service).

In summary, although in cases with complicated factual or legal issues, proceedings in the court of first instance still may be relatively lengthy (from 18 months to 3 years), in terms of duration and effectiveness of the civil procedure, positive changes have been taking place recently and thus the system of legal protection in civil cases by means of recourse to court may be assessed as effective.

Integrity of process

The structure of the State courts system in Poland (the model is of two-tiered court proceedings in civil cases, with the possibility of filing of extraordinary means of appeal), systemic guarantees of independence and impartiality of judges, as well as the procedural provisions themselves guarantee a fair and due proceeding.

Nevertheless, against the background of other continental solutions, the Polish civil procedure should be included within the category of formalised procedures. The judicial practice of courts is dominated by the pursuit of an effective resolution of the dispute that is a resolution that will be both just and in compliance with established facts and provisions of law that are applicable in the case. Moreover, the system of extraordinary means of appeal – a cassation complaint, a complaint for reopening of the proceedings, a complaint for the ascertainment of a court ruling as contradictory with the law (connected with the possibility of seeking compensation from the State) constitute a “safety valve”, which allow for elimination of judgments that for some reason may be defective or illegitimate.

Polish civil procedure, like the majority of modern procedures, is based on the principle of disposition and principle of formal truth – the court rules on the subject of parties’ demands on the basis of evidence offered by the parties. Nevertheless, even in the course of the proceedings, the rules permit the court to allow on its own motion (*ex officio*) evidence that was not indicated by the parties, while in certain categories of cases (heard in the non-litigious mode), the *ex officio* element plays an even more significant role. The legislator imposes on the parties and other participants of proceedings an obligation to perform procedural action in compliance with good practice; moreover, parties are obliged to provide truthful explanations regarding the circumstances of the case without concealing anything, and to present evidence.

In cases where a party to the proceedings is not represented by a professional counsel, in the event of a substantiated need, the court may provide such a party with necessary instructions related to the necessity of undertaking specific procedural actions.

Privilege and disclosure

The Polish procedural law does not use the institution known as disclosure of documents in the form in which it is present in the common law system, or in international commercial arbitration (on the grounds of the IBA Rules on the Taking of Evidence in International Arbitration).

A certain “surrogate” of this institution is a regulation that enables the court to oblige one of the parties, or a person who is not a party to the proceedings, to submit a document in its possession, insofar as such a document constitutes evidence of a fact of substantial significance for the resolution of the case.

The very notion of a document is not defined by the rules of Polish civil procedure – traditionally, this notion is understood as documents that are in a material form, but currently, taking into

account modern technologies, this also extends to all forms of documents in digital format. Recently a certain evolution in the use of this institution may be seen; in preceding years, for the court to issue an order obliging a document to be submitted, the document had to be precisely identified (specific document identification), whereas now, courts also allow parties' motions obliging the other party to present documents specified generically/generally (thus, in this aspect in a manner close to the disclosure procedure), e.g. correspondence between specific entities spanning a certain period, or all decisions issued in a given entity during a specific time interval.

In the case of the institution at issue, the party or third party's obligation to present documents is not absolute. Firstly, it does not at all pertain to documents with classified content. Moreover, the person who is the addressee of the court's order may refuse to present documents, quoting professional privilege (attorney-at-law, journalist, physician) or, in cases where the disclosure of such a document could expose such a person or its relatives to criminal liability, disgrace, or severe and direct material damage. A party may not refuse to present a document if the damage, resulting from such an action, would be the risk of losing the case.

Under the provisions of the Code of Civil Procedure, there is no express basis for the refusal to submit specific documents on the grounds of business secret. However, in practice this type of secret is generally respected (e.g. parties do not submit specific documents in full version, but in the form of abstracts in order to avoid disclosing to their adversaries data constituting business secrets).

Costs and funding

Court proceedings are associated with certain costs. Under a general principle, the party losing the case is obliged to reimburse the winning party with all the costs it incurred in presenting its case.

The party initiating the proceedings needs to pay a court fee. The court fee depends on the type of dispute and the value of the subject of the dispute. In cases concerning monetary rights, it varies from PLN 30 up to PLN 100,000.

Also some other activities, e.g. appointing an expert or witness, require some additional costs. Usually the party requesting such activities will be obliged by the court to pay an advance on these costs.

The costs of the proceedings include the costs of representation by professional counsel and their expenses. The costs of representation by counsel which can be awarded by the court to the benefit of the winning party have a legal limit, depending on the type of the case and the amount in dispute. The absolute maximum is PLN 43,200, however, courts very rarely order the losing party to reimburse the costs of legal representation in such an amount. The statutory regulation does not prohibit concluding contracts pertaining to legal representation stipulating higher rates of attorney's remuneration (as a rule, in the case of larger law offices, these are hourly rates), nevertheless, the party winning the litigation does not entertain the possibility of enforcing the reimbursement of such costs from their adversary.

What is important, if a party cannot afford to pay the court fees or the attorneys' fees, is that it can apply for exemption from incurring legal costs. The exemption can be granted in full or in part. It can also result in representation by a court-assigned attorney.

Polish law does not recognise the institution of allowing for the financing of proceedings by third parties who are not parties to the proceedings. In turn, legal costs insurance is becoming more and more popular.

At the defendant's request, the claimant whose place of domicile, ordinary stay or registered office is located outside of the Republic of Poland or another EU Member State, is obliged to enter a deposit for securing the costs of the proceedings. The court sets the deposit value, bearing in mind the probable total costs to be incurred by the defendant, however, without including the costs of counter-claims.

Interim relief

The Polish Code of Civil Procedure gives the possibility of granting temporary injunction (interim relief) in each civil case to be heard by a State court or an arbitration tribunal.

The court may grant interim injunction both prior to initiation of the proceedings or in the course thereof. Both pecuniary claims (for payment), as well as non-pecuniary claims (e.g. for the ascertainment of the invalidity of an agreement) can be secured by such injunction. The preconditions for the granting of the interim relief are as follows: (i) making of the claim probable; and (ii) a legal interest in granting of the relief. Pursuant to the Code of Civil Procedure, a legal interest in the granting of an injunction exists when the lack of such a relief will render the enforcement of a judgment issued in the case impossible or significantly more difficult, or will otherwise render the achievement of the goal of the proceedings in the case impossible or significantly more difficult.

The legislator specified the manner of securing pecuniary claims enumeratively – among others, the injunction may consist in seizing movables or in encumbering the obliged party's real estate with a judicial mortgage. Whereby, securing non-pecuniary claims may take a form that the court considers suitable under the circumstances of the case. In particular, the court may shape parties' rights and obligations for the duration of the proceedings (in particular, it may impose a ban on the publication of press releases), as well as impose a ban on disposing of objects or rights covered by the proceedings.

In principle, the interim relief may not aim at satisfying the claim, however, in relation to non-pecuniary claims, this is admissible if the relief of this type is indispensable to avert imminent damage or other disadvantageous effects for the entitled party. In such situations, by virtue of the decision on the granting of interim relief, the court may establish orders or injunctions not departing from the settlement as to the merits of the case, i.e. from the legal protection sought in the statement of claims.

Pursuant to the Code of Civil Procedure, a motion for the granting of the relief is heard without delay, however, not later than one week since the day it was lodged with the court.

The court of first instance's decision on the granting of injunction may be challenged. The obliged party may at each time demand the valid decision by virtue of which the relief was granted to be reversed or modified when the cause of the interim relief is eliminated or changed.

The institution of interim relief is a very important instrument and constitutes a substantial element of trial tactics, especially securing non-pecuniary claims: where the statute does not in any way limit the catalogue of the manners of relief, in each case it provides a possibility to flexibly match the manner of interim relief to the circumstances of the case and the needs of the party lodging the motion for the granting of the relief. Securing of the claim makes achieving the goal of the proceedings possible and constitutes a perfect protection of the claimant's interests. For these reasons, this institution is very often used in practice.

It is worth pointing out, however, that a person who obtains relief must take the possibility of compensatory liability towards the other party into account, among other circumstances in the event the statement of claims is dismissed. The compensatory liability is ruled on by the court in separate proceedings.

Enforcement of judgments

Judgments issued by courts of other states are subject to recognition (ascertainment of enforceability) in the territory of the Republic of Poland, however a procedure depends on the type of judgment.

Judgments issued in EU Member States (excluding Denmark) are subject to recognition pursuant to the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation). For judgments rendered in Iceland, Norway and Switzerland, the Convention on

jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 (Lugano Convention) applies. What is more, other bilateral international agreements may apply.

Under the provisions of the Brussels I Regulation, judgments issued in one Member State are recognised in other Member States without the need for conducting special proceedings. A judgment is not recognised, among other times, when: recognition is manifestly contrary to public policy in the EU country in which the recognition is sought; or the defendant, who did not engage in the dispute, was not served with the document that instituted the proceedings or an equivalent document in sufficient time and in such a way as to enable the defendant to arrange for his/her defence.

The Polish Code of Civil Procedure applies only in the absence of international agreements. Judgments of State courts of other countries issued in civil cases are recognised by virtue of law unless there are obstacles provided for in the Code of Civil Procedure. A judgment is not recognised, among other times, when: it is not final and valid in the country of its origin; it was issued in the case falling under the exclusive jurisdiction of Polish courts; the party was deprived of the possibility of defence in the course of the proceedings; or recognition would be contrary to the fundamental principles of public policy of the Republic of Poland (public policy clause). Judgments of courts of other countries issued in civil cases, fit to be enforced by execution, become execution titles upon the ascertainment of their enforceability by a Polish court. The ascertainment of enforceability occurs if the judgment is enforceable in the country of its origin and none of above-mentioned obstacles exist.

Foreign arbitral awards are recognised on the grounds of the Convention on the recognition and enforcement of foreign arbitral awards of 10 June 1958 (New York Convention), whereas Polish arbitral awards are recognised on the grounds of the provisions of the Code of Civil Procedure. Polish courts are favourably predisposed towards courts of arbitration, and they strictly adhere to the prerequisites for the refusal to recognise/ascertain the enforceability of domestic and international arbitral awards.

The claimant who obtains a judgment subject to enforcement by execution and, therefore, holds a enforcement title, must obtain an enforceability clause. The execution is performed by court enforcement officers, except for activities reserved for courts.

In terms of principle, only final and valid judgments are enforceable. As an exception, earlier enforcement is possible in the case of judgments issued by courts as immediately enforceable. It is possible, among others, in the case where the defendant recognises the claim.

Cross-border litigation

Frequently, Polish courts are involved in proceedings pending before courts of other countries. This is so mainly in the case of ruling on the securing of claims.

Polish courts may rule on interim relief for securing of claims in disputes with the participation of entities from other countries in a situation when, in keeping with the general principles, they have jurisdiction to hear the main dispute. What is of importance, however, is that domestic jurisdiction also exists in securing proceedings when the relief may be enforced in the Republic of Poland or bear effects in the Republic of Poland.

In turn, pursuant to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), the motion for the application of interim measures, including relief measures, provided for in the law of the Member State, may be lodged with the court of this State also when, on the grounds of the Regulation, the main case falls under the jurisdiction of the court of another Member State. The literature of the subject and the case law of the Court of Justice of the European Union indicate that the prerequisite for granting the interim relief in such a case is the existence of the national jurisdiction in the securing proceedings pursuant to the internal law

of a given State and existence of “a real relation” between the relief measure and the territory of the State of the court ruling in this subject. This relation may, for example, consist in the fact that the debtor’s assets and property are located in a given country.

A Polish court may also issue a decision on securing claims pursued before a court of arbitration, and do so regardless of whether the venue of the proceedings before the court of arbitration is located in the Republic of Poland or abroad, or is not specified.

Another aspect of cross-border litigation is the so-called legal aid in cross-border cases, which extends to: (i) taking of evidence; (ii) performing other actions; as well as (iii) serving court letters. These issues are regulated by the acts of the European law, international agreements, and the Polish Code of Civil Procedure.

Undoubtedly, Council Regulations (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, are the most important. From among international agreements, it is worth citing the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters drawn up in the Hague on 18 March 1970, which Poland is a party to. Under the Convention, in civil and commercial cases, the court of one of the signatory-states, in compliance with the provisions of its own law, by a motion for the taking of evidence may demand the appropriate body of another signatory-State to take evidence or perform other court actions. The motion may be not complied with only in cases where complying therewith in the summoned country does not belong to the competence of courts, or the summoned country finds that complying with the motion violates its sovereignty or safeness.

In turn, under the Code of Civil Procedure, a Polish court may secure evidence located outside of the Republic of Poland if it is necessary to pursue the claim abroad. A Polish court may also request courts or other bodies of other countries to take evidence abroad.

Similarly, Polish courts may request court letters to be served on a person with a domicile or ordinary stay abroad by courts or other authorities of other countries. Moreover, Polish courts also take evidence and serve letters to motions of courts or other bodies of other countries.

International arbitration

Development of arbitration is facilitated by legal regulations equivalent to standards adopted by other countries and based on the UNICITRAL Model Law. Provisions pertaining to the proceedings before a court of arbitration (revised in 2005) are presently included in part V of the Polish Code of Civil Procedure. In principle, they apply to domestic arbitration (hence, in cases where the venue of proceedings before the court of arbitration is located in Poland), but to a certain degree, also to foreign arbitration (when the venue is located outside of the territory of the Republic of Poland).

Under Polish law, the so-called arbitrability is an attribute of all disputes for property rights as well as such disputes for non-property rights which may be subject to an in-court settlement. In cases where a dispute covered by an arbitration agreement is brought before a State court, the court shall reject the statement of claims or motion when the second party, prior to engaging in a dispute on the merits of the case, raises the charge of the arbitration agreement. The State court is entitled to examine the validity, effectiveness and enforceability of the parties’ arbitration agreement. At the same time, in keeping with the *kompetenz-kompetenz* principle, the provisions of the Code of Civil Procedure provide that the arbitration tribunal is entitled to rule on its own jurisdiction in the case, including the existence, validity and effectiveness of the arbitration agreement. In the case where in ruling on the charge of the lack of its competence in the case the arbitration tribunal issues a separate decision, the Code of Civil Procedure allows for the possibility of challenging such a decision before the State court.

The parties' choice of arbitration as a forum competent to settle a given dispute or disputes does not exclude the possibility of petitioning the State courts to secure the claims pursued in arbitration (the interim relief is granted under the provisions of the Code of Civil Procedure). At the same time, provisions of the CCP grant the court of arbitration the competence to secure the claims for the duration of the proceedings (the parties may, however, exclude this possibility), whereas enforcement of the court's decision on the interim relief requires the court to issue a clause of enforceability.

A State court's intervention into arbitration is limited to strictly defined cases (e.g. to some extent the procedure for exclusion of an arbitrator). Provisions of the Code of Civil Procedure provide specific instruments of legal assistance/support of the State court for the court of arbitration in the proceedings that it conducts. The assistance of the State court may, therefore, consist in the court's hearing of a witness or party, taking the evidence from a document or expert opinion, or performing an on-site examination.

Poland offers a good basis for institutional arbitration. There are two main and many more arbitral institutions. The first one is the Court of Arbitration at the Polish Chamber of Commerce. It was established over 60 years ago and is a very renowned and valued institution in the region. The second one is the Court of Arbitration Lewiatan. It was founded in 2005 and since then it has gained more and more popularity for its energy and innovative approach to arbitration.

Mediation and ADR

ADR is becoming increasingly popular in Poland. Actions engaged in by the Minister of Justice in recent years, e.g. the social campaign popularising mediation as an alternative method of dispute resolution, or professional corporations (Mediation Centre at the Polish Bar Council), and NGOs create a positive climate for the development of mediation and contribute to increasing social awareness in this scope.

After the introduction in 2005 into the Polish Code of Civil Procedure of provisions on mediation enabling courts to also refer parties to mediation, in the period from 2006 to 2013 the number of commercial cases in which, on the grounds of the court's decision, parties were referred to mediation increased tenfold, whereby mediation contributed to the final settlement of disputes between parties in approx. 15-30% of such cases.

Provisions of the Polish Code of Civil Procedure presently allow for mediation to be conducted both prior to the initiation of proceedings before the court on the grounds of the agreement between parties as well as, already in the course of the court proceedings, on the basis of a court decision referring parties to mediation. The court may also refer parties to mediation on its own motion (*ex officio*), but only until the moment of conclusion of the first hearing in the case, whereas after this moment, only to a concurrent motion of the parties. The court may refer parties to mediation only one time in the course of given proceedings.

The course of mediation (conducted in the course of court proceedings as well as independent of such proceedings) should be recorded in the form of minutes; in the case where in the course of the mediation parties agree on the manner of settlement of the dispute between them, the settlement they conclude is included in or attached to the minutes; such a settlement is signed by the parties thereto. Upon confirmation by the court, a settlement concluded before a mediator has the legal force of a settlement concluded before a court.

A mediator can be any natural person with a full capacity to perform acts in law, except for an acting judge. A person entered on the list as a permanent mediator may refuse to conduct mediation only for grave reasons. In the event where, prior to initiating the court proceedings, parties concluded a mediation agreement, the State courts, before examining it and the other party's charge raised prior to engaging in the dispute on the merits, refer parties to mediation.

The law prescribes the principle of non-disclosure of mediation proceedings; on one hand, the mediator is obliged to keep confidential all of which they learn in relation to mediation (parties

may relieve mediators of this duty), on the other hand, a mediation participant may not, either in the proceedings before the State court or court of arbitration, invoke findings and statements made in the course of mediation.

Under the CCP special proceedings can also be conducted in court, referred to as “conciliatory proceedings” (however, these proceedings are a different type of ADR than the conciliation). These proceedings may be conducted in all cases that can be solved through a settlement in accordance with the Polish law. Conciliatory proceedings are initiated at a motion filed by a party to the district court in the domicile of the other party. In these proceedings, the judge does not decide the case but is a silent observer of the negotiations concluded during the hearing. In fact, the only role of the judge is to include the settlement reached by the parties in the minutes of the conciliatory hearing. Such a settlement, referred to as a court settlement, can subsequently be appended with an enforcement clause and serve as a basis for the initiation of enforcement proceedings, with use of State coercion. A court settlement can also be reached during standard civil proceedings.

Moreover, under the CCP, at each stage of proceedings in cases where concluding a settlement is admissible, the court makes attempts for amicable resolution of disputes, persuading parties to conclude a settlement. In the case when parties conclude an in-court settlement, the court discontinues the proceedings whereas the settlement enjoys the status of a court verdict. Upon vesting it with the enforcement clause, the settlement constitutes an execution title providing the basis for execution. The court may find a conclusion of a settlement inadmissible only in the situation where the circumstances of the case indicate that the mentioned acts stand in contradiction with the law or principles of social coexistence, or are intended to circumvent the law.

**Dr. Barbara Jelonek-Jarco****Tel: +48 12 619 40 42 / Email: barbara.jelonek@kkg.pl**

Attorney at law, partner at KKG Kubas Kos Gaertner. Assistant at the Chair of Civil Law at the Jagiellonian University. She specialises in civil substantive and procedural law as well as bankruptcy law. She has conducted numerous court and arbitration proceedings for KKG's institutional clients. She focuses her practice on such fields as companies law and private commercial law, but she also has extensive experience in bankruptcy matters as well as administrative and court and administrative proceedings. As an expert in the scope of land and mortgage registers and mortgage law (doctoral dissertation entitled *The Warranty of Faith of Land and Mortgage Registers*), she deals with matters connected with broadly understood real estate transactions. Laureate of the Legal Daily "Dziennik Gazeta Prawna" – Rising Stars 2012 ranking. The author of numerous articles, conference presentations, opinions and monographs in the scope of property law and obligations law.

**Agnieszka Trzaska****Tel: +48 12 619 40 67 / Email: agnieszka.trzaska@kkg.pl**

Attorney at law, senior associate at KKG Kubas Kos Gaertner. An expert in the scope of class action, she is in charge of the team dealing with the group proceedings of entrepreneurs against the Social Insurance Company [ZUS] and of flood victims from Sandomierz and Płock against the State Treasury and the remaining competent entities. She has taken part in bankruptcy proceedings and also worked on the team ensuring the provision of comprehensive legal services for one of the leading banks in Poland. She has cooperated with the team for court proceedings and arbitration, conducting one of the largest disputes in Europe regarding the takeover of one of the mobile telephone operators. She has experience in the scope of international commercial arbitration and economic matters, including disputes between company shareholders.

KKG Kubas Kos Gaertner

Budynek "Focus", al. Armii Ludowej 26, Warszawa PL 00-609, Poland
Tel: +48 22 206 83 00 / Fax: +48 22 206 83 02 / URL: <http://www.kkg.pl>

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