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Motion for summons to conciliation session will not interrupt course of limitation period

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On 29 December 2021 an amendment to the Polish Civil Code (CC)⁽¹⁾ was announced in the *Journal of Laws of Republic of Poland*.⁽²⁾ The act amends, among others, article 121 of the CC, which specifies when a limitation period is subject to suspension. This amendment should be regarded as another step by the Polish legislature to counteract the practice of submitting motions for a summons to a conciliation session for purposes other than to reach a settlement.

Conciliation – brief history of controversy

Until recently, commencing conciliation proceedings was one of the instruments most frequently used to interrupt the limitation period. This was a convenient solution as the filing fee was no more than 300 zlotys (until 2019). Moreover, the motion for a summons to a conciliation session initially required only a brief description of the case, and the conciliation proceedings could be limited to a single court hearing narrowed to the determination of whether a settlement has been reached between the parties.

At the same time, there was initially no doubt that each motion for a summons to a conciliation session interrupted the limitation period, because the doctrine and the case law considered the commencement of the conciliation proceedings as "an action taken directly to satisfy the claim", which – according to article 123(1.1) of the CC – interrupts

the limitation period. The interruption of the limitation period is beneficial for the creditor as, after an interruption, the limitation period runs anew (article 124(1) of the CC).

It is therefore not surprising that the filing of a motion for a summons to a conciliation session for a purpose other than to actually settle the claim became a common practice. This, in turn, gave rise to considerations in the case law as to whether such a motion results in the interruption of the limitation period in every case. The courts began to have doubts as to whether, in each and every case, it should be qualified as an "action taken directly to satisfy a claim", especially if the party initiating the conciliation proceedings had no intention of concluding a settlement but only wanted to interrupt the limitation period. Although other views also exist in the case law, the view now prevailing is that the first motion for a summons to a conciliation session always results in the interruption of the limitation period. At the same time, the view that every motion (ie, not only the first one) interrupts the limitation period was recently supported by the Supreme Court in its judgment of 17 June 2021.⁽³⁾

However, there is no consensus as to whether subsequent motions have such an effect as well. Several different views have emerged on this subject. According to one view, a subsequent motion for a summons to a conciliation session also interrupts the running of the limitation period, but only if the creditor hoped for a settlement to be reached in the conciliation and did not file the motion only to interrupt the limitation period. Furthermore, within this view, two positions have been developed as to who is entitled to examine the actual purpose of the motion. The first view is that such an assessment may be conducted only at the stage of conciliation itself, while the opposite view assumes that it can be made later as well, after the conciliation has ended, in the proceedings in which the merits of the claim are assessed.

These discrepancies in the jurisprudence resulted in the Supreme Court referring the questions outlined above to the enlarged panel of the Supreme Court for resolution.⁽⁴⁾ To date, the resolution has not been adopted.

The practice of using conciliation proceedings for purposes other than settlement of the claims has not escaped the attention of the legislature either. The first attempt to limit this practice was made in

2019⁽⁵⁾ when a requirement was introduced that a motion for a summons to a conciliation session should indicate settlement proposals and the filing fee was significantly increased (it is now one-fifth of the regular filing fee stipulated for the statement of claim). The provisions on the limitation period remained, however, unchanged.

What will change in 2022?

As the above amendments did not eliminate the doubts that still exist as to whether motions for a summons to a conciliation session interrupt the limitation period, and if so, in what circumstances and who should assess this, the legislature made another attempt to solve the problem, this time by amending not the procedural provisions concerning the motion for a summons to a conciliation session, but the substantive law provisions concerning the limitation period of claims.

The amendment to the statute of limitations, which was announced on 29 December 2021, will come into force on 30 June 2022. So far, the substantive law on the statute of limitations has not mentioned the motion for a summons to a conciliation session. The amendment directly mentions such a motion; however, it is not listed in article 123 of the CC, which specifies actions interrupting the limitation period, but in article 121 of the CC, which specifies situations in which the limitation period is only suspended and does not run for the duration of a specific impediment. As of 30 June 2022, one such impediment will be the conciliation proceedings: the limitation period for claims covered by a motion for a summons to a conciliation session will not run for the duration of the conciliation proceedings (new article 121.6 of the CC).

Article 121 of the CC in its new wording will only apply to conciliation proceedings initiated after 29 June 2022. Thus, with respect to the motions for a summons to a conciliation session submitted prior to and on 29 June 2022, all previous doubts remain valid.

Comment

The effect of the amendment will be that the conciliation proceedings will continue to extend the limitation period, but will not cause the period to run anew. The duration of the conciliation proceedings will only be added to the limitation period of the claim stipulated in the statute.

The amendment will remove doubts as to whether the motion for a summons to a conciliation session interrupts the limitation period, and if so, in what circumstances. The answer to this question will become obvious – in no case will this motion interrupt the course of the statute of limitations. Such an aim of this amendment follows directly from the motives of the draft amendment. Undoubtedly, this will seriously limit creditors' interest in conciliation proceedings. Starting from 30 June 2022, by initiating conciliation proceedings, the creditor will still gain some time to prepare the proper proceedings against its debtor, but will not gain a doubling of this time.

Moreover, despite appearances, this amendment may also have some positive effects for creditors, because they will no longer live in uncertainty as to which of the numerous views on the effect of the motion for a summons to a conciliation session on the statute of limitations will be accepted by the court in their case. This effect will be known from the outset.

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Endnotes

(1) Act of 23 April 1964 – Civil Code, consolidated text: *Journal of Laws*, 2020, item 1740, as amended.

(2) Act of 2 December 2021 on amending the Act – Civil Code, the Act – Code of Civil Procedure and certain other acts, *Journal of Laws*, 2021, item 2459.

(3) II CSKP 104/21.

(4) Ruling of the Supreme Court of 16 October 2020, IV CSK 107/20 (IV CSKP 1/21), available here.

(5) Act of 4 July 2019 amending the Act – Code of Civil Procedure and certain other acts; consolidated text: *Journal of Laws*, 2019, item 1469, as amended.