



Special rules for hearing commercial cases before state courts in Poland

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Introduction

The rules governing the procedure for hearing commercial matters by state courts in Poland have, for many years, been rather unstable. The legislature introduced a special procedure for such cases, then subjected them to the general rules of civil procedure, only to subsequently return to the special procedure later. Since 2019,⁽¹⁾ special rules of procedure for commercial matters have applied, although the return to them is highly criticised, mostly by the judges themselves. Thus it is unclear how long this phase will last and whether, in time, commercial matters will be heard according to the general rules of civil procedure again. When re-introducing the special proceedings in commercial matters in 2019, the legislature cited the need to speed up the adjudication of these cases as the reason for introducing separate provisions in this regard. Three years from these provisions' entry into force have shown that they have only marginally fulfilled their role.

Commercial matter

The provisions of the Code of Civil Procedure (CCP)⁽²⁾ that define commercial matters have been formulated in such a way as to cover all matters related to business transactions. They are applicable in most commercial cases, including cases from civil relations between

entrepreneurs within the scope of their business activity (eg, construction contracts, leases, bankruptcy and restructuring law). The court may hear a commercial case bypassing the provisions on proceedings in commercial matters only in exceptional cases (eg, at the request of a party who is not an entrepreneur (even though the matter at hand is a "commercial" case within the meaning of CCP) or is an entrepreneur who is a natural person).

Limitations on claimant's right to dispose of process

Commercial proceedings have a number of distinctions from the general rules of CCP on litigious procedure. One of them is the limitation of subject-matter changes during the proceedings – new claims cannot be raised instead of or in addition to the original claims. However, extending the claim for further periods (in cases of recurring performance) or claiming instead of the original subject of the dispute, its equivalent or another subject, is still admissible. Also, subjective changes are generally not allowed. The above means that the party preparing for the proceedings should pay particular attention to the correct designation of the claims and the parties, as the possibility of introducing changes in this respect will be limited after the filing of the statement of claim.

Furthermore, a counterclaim is excluded in commercial proceedings. Thus, the defendant, wishing to assert a claim against the claimant, is forced to initiate separate proceedings.

Moreover, it is assumed that the court's decision in the case is to be made within six months from the date of filing the statement of defence. However, practice to date shows that this is not achievable, particularly in more complex cases. Due to the occupancy of the courts, the first hearing is often not even held within this time limit, especially in the major courts.

Concentration of evidence and evidentiary limitations

In the proceedings in commercial matters, the parties should, as a rule, invoke all claims and evidence in their first pleadings. The submission of subsequent claims and evidence is possible if the party makes plausible the fact that it was not possible to submit them earlier or that the need to submit them arose later. In this case, the party should submit these new claims and evidence within two weeks.

However, the CCP provides for another possible moment of concentration of evidence – the moment determined by the presiding judge. The power of the presiding judge to designate a moment for the submission of evidence, other than the moment of filing the statement of claim and the statement of defence, is an expression of the judge's discretionary power conferred upon them to avoid harmful automatism in the proceedings. According to the prevailing view, this power of the presiding judge supports the assumption that the CCP does not provide for a system of preclusion in commercial matters.

Undoubtedly, the CCP imposes far-reaching time limitations on the submissions of claims and evidence. A party should therefore ensure that all necessary submissions are made at the beginning of the proceedings. Otherwise, it runs the risk that later submissions will be disregarded.

The CCP also introduces other distinctions regarding the taking of evidence (eg, a witness statement may be taken exceptionally, after other means of evidence have been exhausted). A party should therefore first attempt to prove its claim with documents. This means that the party should accurately keep the records of the events at the stage of execution and performance of the contract before any dispute arises. This is extremely important, particularly in construction work cases.

In 2019, the new institution of an "evidentiary agreement" was introduced, by which the parties can exclude certain evidence in proceedings.

Comment

The criticism against the new procedural rules of commercial matters introduced in 2019 is, among other things, that similar special rules were already in force in the past and were abandoned precisely because they did not work (and partly, due to their excessive rigour, were even in breach of the Polish Constitution). The current rules, however, are not a simple return to the previous regulation – the law in force is more flexible. With skilful management of the proceedings by the judge, the new provisions can avoid the flaws that prevented the previous similar regulation from standing. On the other hand, it seems that the current rules are designed for relatively uncomplicated and rather straightforward disputes between entrepreneurs. Meanwhile, the most complex disputes (in factual and legal terms) that courts come

across fall precisely into the category of commercial matters. In such large disputes, both the naivety of the assumption that the case can be concluded six months after filing the statement of defence and the negative consequences of certain restrictions, (eg, regarding the disposal of the subject matter of the dispute by the claimant or the inadmissibility of the counterclaim by the defendant) become apparent.

However, it must be acknowledged that the new regulations were very unlucky so far. They were intended to speed up the proceedings in commercial matters but were introduced just before the covid-19 pandemic, which eminently slowed down the hearing of all categories of court cases in Poland, not just commercial cases. It therefore seems appropriate to allow a little more time for the new regulations to have the opportunity to demonstrate their real impact on the efficiency of the proceedings.

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Endnotes

(1) Act of 4 July 2019 on amending the Act – Code of Civil Procedure and certain other acts, Journal of Laws (Dziennik Ustaw) 2019, item 1469.

(2) Act of 17 November 1964 – Code of Civil Procedure; consolidated text: Journal of Laws (Dziennik Ustaw) 2021, item 1805, as amended.