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New model of preparatory proceedings: amendment to code of civil procedure

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Introduction

The institution of preparatory proceedings was introduced in the Polish Code of Civil Procedure in 2019.(1) The concept was borrowed from arbitration, where preparatory proceedings have been successfully operating for many years and have become highly efficient.

This new institution was intended to:

- partially deformalise communication between judges and parties;
- contribute to the clarification of facts and evidence at an early stage of the proceedings;
- identify the essence of the dispute; and
- create conditions for an amicable settlement of the dispute in its first phase.

All of the above are supposed to make court proceedings less time and labour intensive by enabling the parties and the court to schedule the full proceedings efficiently. Although these intentions are commendable, preparatory proceedings have not been adopted

comfortably into court proceedings; the impracticability of the regulations have caused a lot of ambiguities and prolonged the proceedings.

Therefore, in March 2023, an amendment to the Code of Civil Procedure[(2)] was passed. It aimed, among other things, to streamline and simplify preparatory proceedings, and eliminate interpretation doubts. The key changes concern:

- reducing the rigour of participation of the parties;
- the procedural aspects of preparatory proceedings; and
- the construction and approval of a hearing plan.

Reducing rigour of participation of parties

Previously, both parties and their attorneys were obliged to participate in preparatory proceedings. Absence of either caused the proceedings to be halted, which is a highly rigorous consequence. The party seeking to be excused from obligatory presence during the preparatory proceedings had to file a separate motion and wait for the court's decision. This was a very complicated and time-consuming procedure with no rational justification. Practice has shown that summoning parties, especially those who are legal entities or the department of the state treasury, is pointless, and the presence of an attorney is sufficient.

The new regulations allow for only the party's attorney to be summoned, which means that the court may bypass – based on its own judgment – summoning the parties themselves (requiring their personal presence) if the attorney's participation is deemed sufficient. Now the risk of discontinuing the proceedings due to the absence of the party representatives is significantly less, which makes preparatory proceedings much more attractive for the parties.

Moreover, doubts about appealing against an order for discontinuation have been eliminated. From now on, this will be subject to appeal under general rules, and will be delivered immediately with the justification. This aims to speed up the appeal procedure to make preparatory proceedings more efficient.

Procedural issues

The amendments are also intended to clarify procedural issues that had previously caused a lot of interpretation doubts.

Judges now have the power to conduct preparatory proceedings in the way they consider most appropriate and efficient. The legislator has also introduced the possibility to conduct preparatory proceedings online, which could prove crucial for parties and attorneys, especially considering the consequences of an unexcused absence.

The new regulation also includes provisions regarding the delivery of the court's decisions. Important questions had been raised about whether orders issued at preparatory sessions should be delivered to the parties or announced during the hearing without separate delivery. The new provisions clarify that issue, stating that the court's resolutions issued during preparatory sessions are to be announced in the presence of the parties (or their attorneys) and separate delivery is not required.

Another important change concerns the ability of transferring a case to be settled in a closed hearing if:

- the parties have not reached an agreement during the preparatory proceedings; and
- the court sees no need for a public hearing.

This amendment is highly controversial as it is perceived to limit the parties' right to a public hearing. In written motives, the legislator has explained that parties can fully present their statements during preparatory proceedings, so their right to court and to be heard is already fulfilled. However, commentators point out that the informal and preliminary nature of preparatory proceedings is not sufficient to be considered equivalent to a public hearing, and so the regulation is a violation of the parties' fundamental right to court and to be heard.

Hearing plan

The idea of preparatory proceedings is to schedule full future proceedings at the very beginning of the process to make it more streamlined. This detailed schedule should be settled in a hearing plan appointed by the judge and the parties.

The previous regulation on this topic was very complicated and made it inefficient. The amendment simplifies the construction and approval, and clarifies the procedural aspects of the trial plan.

First, the new regulation resolves the problem of the formation of the hearing plan, which has caused several doubts, particularly on issues regarding evidence. The provisions now clearly state that the draft of the trial plan, prepared by the parties, will be approved by the court alongside all the procedural decisions (which simplify the procedure of modifying any evidence decisions). In case the parties don't agree on a hearing plan, the court may issue one on its own by a procedural decision. This decision is not contestable.

Second, the content of the hearing plan has also been specified. It should include decisions on evidentiary motions, the order of the evidence, and specific dates of subsequent court sessions. The amendment also clarifies that the court is allowed to leave some evidentiary motions unresolved if a decision on them would be premature at that stage of the proceedings. In such a case, however, the court is required to specify the conditions and timing of the future evidence decisions on the pending evidentiary motions.

Finally, the new regulation modifies the most important and highly criticised stipulation in the previous provisions . The procedure of changing the hearing plan (which had been the biggest obstacle for judges and parties in conducting preparatory proceedings) has now been simplified. Put briefly, changing the hearing plan used to require the vast majority of the preparatory proceedings to be repeated, which was highly inefficient. The new regulation states that the court may issue a decision to change the hearing plan either in public or closed hearings. This is a natural consequence of the clarification that the formation of the trial plan (ie, a court decision) can be modified by another decision according to the circumstances. New preparatory proceedings will be scheduled afresh only if both parties demand it, which will be extremely rare. The new regulation also clarifies that, if the trial plan is changed, actions taken under the previous plan remain in force unless the court decides otherwise.

Comment

The introduced amendment of March 2023 was intended to clarify and simplify the current procedure of preparatory proceedings. Unfortunately, this goal has not been achieved, since maximising efficiency cannot be achieved at the expense of the fundamental rights of parties. Some of the amendments, however, especially those which

are the result of doubts highlighted by the professional practitioners, should be assessed positively, although they are not sufficient to make preparatory proceedings as popular as they should be.

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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 9 March 2023 on amending the Act – Code of Civil Procedure and certain other acts, Journal of Laws (Dziennik Ustaw) 2023, item 614.