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How to bring a case to court

Polonia

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-----inglés

1 Do I have to go to court or is there another alternative?

An alternative to bringing a case before a court is referring it to mediation proceedings. Mediation is an extrajudicial (amicable) method of dispute resolution, with the participation of an independent and qualified person or institution (a mediator). Mediation proceedings are voluntary (a party to the dispute may at any time withhold the consent to mediation and withdraw from mediation) and confidential (participants are obliged to keep information obtained in the course of mediation confidential), and mediators are impartial and independent (they do not take the side of either of the parties and in principle do not suggest solutions to the dispute).

2 Is there any time limit to bring a court action?

Generally, actions may be lodged with the court at any time, unless special regulations provide for a time limit. However, a party lodging an action after the expiry of the limitation period of the claim runs the risk of losing the case if the other party argues that the action is time-barred.

Limitation periods (*terminy zawite*) apply under Polish law. The specific nature of a limitation period means that if the entitled party fails to undertake a specific action within the limitation period, the party's right to carry out that specific action expires. The Code of Civil Procedure (CCP, *Kodeks postępowania cywilnego*) does not contain any general provision regulating limitation periods, but indicates those periods in regulations concerning specific situations.

The expiry of the right as a result of the expiry of the limitation period is binding on the parties to the legal relationship, the court or another authority examining the case. The authority takes this into account automatically, not at the request of a party or as a result of a plea being raised. The limitation period can be reinstated only in exceptional circumstances, where the failure to meet it was not due to the party's fault.

3 Should I go to a court in this Member State?

In order to establish whether a court in the territory of a given Member State is competent to hear a specific case, the jurisdiction of that court should be determined.

The general jurisdiction of ordinary courts in Poland to resolve civil cases in its territory is called national jurisdiction and is regulated by the CCP.

Cases to be tried are subject to national jurisdiction if the defendant is domiciled or habitually resident in Poland or has its registered office in Poland.

Moreover, national jurisdiction rests with Polish courts in the following cases:

- matrimonial (national jurisdiction is exclusive if both spouses are Polish citizens and are domiciled and habitually resident in Poland);
- concerning the relationship between parents and children (national jurisdiction is exclusive if all parties are Polish citizens and are domiciled and habitually resident in Poland);
- concerning maintenance and relating to the establishment of a child's parentage (they are subject to national jurisdiction if the claimant is an entitled party domiciled or habitually resident in Poland);
- concerning labour law (cases in which the claimant is an employee are subject to national jurisdiction if the work usually is, was or was to be carried out in Poland);
- concerning insurance (cases concerning a relationship of insurance and brought against the insurer are subject to national jurisdiction if the claimant is domiciled in Poland or if there is another element indicating the territorial jurisdiction of Poland);
- concerning consumers (cases in which a consumer is the claimant are subject to national jurisdiction if the consumer is domiciled or habitually resident in Poland and undertook the actions necessary to enter into an agreement in Poland; in such cases, the other party to the agreement with the consumer is treated as an entity domiciled or with its registered office in Poland if it has an undertaking or a branch in Poland and the agreement with the consumer was concluded as part of the business of that undertaking or branch).

Polish courts also have exclusive national jurisdiction over: cases concerning rights in rem to real estate and the possession of real estate located in Poland; cases concerning lease (*najem* or *dzierżawa*) and other relationships involving the use of such real estate (except for cases for rent and other amounts due for using or deriving benefits from the real estate); other cases where the court's ruling concerns rights in rem, possession, or use of real estate located in Poland;

cases for the dissolution of a legal person or an organisational unit which is not a legal person, as well as for repealing or annulling resolutions of their governing bodies, if the legal person or organisational unit not being a legal person has its registered office in Poland.

Moreover, if national jurisdiction covers a case brought under the main claim, this jurisdiction also covers the counterclaim.

The parties to a specified legal relationship may agree in writing to submit matters concerning property rights that arise or may arise from the relationship to the jurisdiction of Polish courts.

The court automatically considers the absence of national jurisdiction at each stage of the case.

If it is found that national jurisdiction does not apply, the court rejects the claim or application.

The absence of national jurisdiction is a reason for invalidity of the proceedings.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

In order to establish which district court (*sąd rejonowy*) or regional court (*sąd okręgowy*) is competent to hear the case, the territorial jurisdiction of the court should be taken into account. Under Polish law, we distinguish general territorial jurisdiction, alternative territorial jurisdiction and exclusive territorial jurisdiction.

a. general territorial jurisdiction

Generally, actions must be brought to the court of first instance with territorial jurisdiction over the defendant's domicile (under the Civil Code, the domicile of a natural person is the town/city in which they stay with the intention to stay on a permanent basis). If the defendant is not domiciled in Poland, territorial jurisdiction is determined according to their place of stay, and where that place is unknown or is outside Poland – according to the defendant's last domicile in Poland. Actions against the State Treasury must be lodged in the court with jurisdiction over the registered office of the state organisational unit which the claim concerns. Actions against a legal person or another entity which is not a natural person must be brought in the court with jurisdiction over the location of that entity's registered office.

b. alternative territorial jurisdiction

Based on the regulations on alternative territorial jurisdiction, claimants may – at their discretion – bring the action either before the court of general jurisdiction or before another court specified in legislation as the competent court. In Polish civil proceedings, alternative territorial jurisdiction is provided for in cases: for a maintenance claim and for establishing a child's parentage; for a property claim against a business entity; concerning disputes under contracts; for a tort claim; for payment of an amount due for handling a case (a fee payable to an attorney); for a claim under lease (*najem* or *dzierżawa*) of real estate; concerning a promissory note or cheque.

Actions for a maintenance claim and for establishing a child's parentage and related claims may be brought according to the domicile of the entitled party. Actions for a property claim against a business entity may be brought before the court with jurisdiction over the location of the headquarters or the branch if the claim is connected with the activities of the headquarters or of that branch. Actions for concluding an agreement, establishing its content, amending an agreement and for establishing the existence of an agreement, for the performance, termination or annulment of an agreement, as well as for damages on account of a failure to perform or properly perform an agreement may be brought before the court having jurisdiction over the place of performance of the agreement. Should there be any doubts, the place of performance of the agreement should be confirmed by a document. Actions for a tort claim may be brought before the court in the territorial jurisdiction of which the event causing the damage occurred. Actions for the payment of an amount due for handling a case may be brought before the court having jurisdiction over the place where the legal representative handled the case. Actions for a claim under real estate lease (*najem* or *dzierżawa*) may be brought before the court with jurisdiction over the location of the real estate. Actions against a party obliged under a promissory note or cheque may be brought before the court having jurisdiction over the place of payment. Several parties obliged under a promissory note or cheque may be sued jointly before the court having jurisdiction over the place of payment or the court having general jurisdiction for the acceptor or issuer of the promissory note or cheque.

c. exclusive territorial jurisdiction

Provisions governing exclusive territorial jurisdiction are mandatory. They exclude, in certain categories of cases, the possibility of bringing an action before the court of general jurisdiction and also before the court of alternative jurisdiction, as well as the possibility of referring the case for resolution to another court by means of a jurisdiction agreement. In the case of exclusive jurisdiction, only one court from among courts of the same level is competent to hear a specific case. Depending on the type of the case, this will be a specific district or regional court.

Actions for ownership or other rights in rem over real estate, as well as for the possession of real estate, may be brought only before the court with jurisdiction over the location of the real estate. If the subject of the dispute is a land easement, jurisdiction is determined according to the location of the encumbered property. The aforementioned jurisdiction encompasses personal claims related to rights in rem and rights pursued jointly with those claims against the same defendant. Actions concerning succession, a reserved share, as well as bequests, instructions or other testamentary dispositions, may be brought only before the court having jurisdiction over the testator's last place of habitual residence, and if the testator's habitual residence in Poland cannot be established, before the court having jurisdiction over the location of the inheritance or part thereof. Actions concerning membership in a co-operative, partnership, company or association may be brought only in the court with jurisdiction over the location of the registered office. Actions concerning a relationship of marriage may be brought only before the court in the territorial jurisdiction of which the spouses were last domiciled, if even one of them is still domiciled or habitually resident within that jurisdiction. In the absence of such a basis, the court with exclusive jurisdiction is the court with jurisdiction over the domicile of the defendant, and in the absence also of that basis - the court with jurisdiction over the domicile of the claimant. Actions concerning a relationship between parents and children and between adopter and adoptee may be brought exclusively before the court with jurisdiction over the domicile of the claimant, provided there is no basis for filing an action under general jurisdiction provisions.

In addition, if the jurisdiction of several courts is justified or if the action is brought against several parties for which various courts are competent under the legislation on general jurisdiction, the claimant can choose from among those courts. The same applies if the real estate whose location is the basis for determining the court jurisdiction is situated in several jurisdiction areas. If the competent court cannot hear the case or take other steps due to an obstacle, its superior court will designate another court at a closed session. If, under the provisions of the CCP, territorial jurisdiction cannot be established on the basis of the circumstances of the case, the Supreme Court (*Sąd Najwyższy*) will designate the court before which the action is to be brought at a closed session. The parties may agree in writing to submit an already existing dispute, or any disputes that may arise in the future out of a specified legal relationship, to a court of first instance which does not have territorial jurisdiction under law. That court will then have exclusive jurisdiction, unless the parties have agreed otherwise or unless the claimant has filed a statement of claim in an electronic procedure by writ of payment (*elektroniczne postępowanie upominawcze*, EPU). The parties may also limit, by means of a written agreement, the claimant's right to choose from among several courts competent for such disputes. The parties may not, however, change exclusive jurisdiction.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

The material jurisdiction of ordinary courts (*sądy powszechne*) of the Republic of Poland is regulated by the provisions of the Code of Civil Procedure.

In civil proceedings, the courts of first instance are district courts and regional courts, and the courts of second instance are regional courts and courts of appeal (*sądy apelacyjne*).

In principle, civil cases are heard at first instance by district courts, unless jurisdiction is reserved for regional courts. The jurisdiction of regional courts at first instance covers cases:

- for non-property rights (and property claims pursued together with those rights), except for cases for establishing or disputing a child's parentage, cases for annulling an acknowledgment of paternity and for dissolving adoption;
- for the protection of copyrights and related rights, as well as cases concerning inventions, utility models, industrial designs, trade marks, geographical indications and integrated circuits topographies, and cases for the protection of other intangible property rights;
- for claims under the Press Law;

- for property rights where the value of the subject of the dispute exceeds PLN 75 000 (except for maintenance cases, cases for infringement of possession, cases for establishing the separation of property of spouses, for aligning the content of a land register with the actual legal status, and cases examined in an electronic procedure by writ of payment);
- for issuing a judgment in lieu of a resolution to divide a co-operative;
- for repealing, annulling or establishing the non-existence of resolutions of governing bodies of legal entities or organisational units which are not legal persons but which have been granted legal personality by law;
- for preventing and combatting unfair competition;
- for compensation on account of damage caused by issuing an unlawful final judgment.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

In principle, in civil proceedings the parties and their governing bodies or statutory representatives may act before the court in person or through representatives.

However, the CCP provides for mandatory representation by a lawyer in specified situations. In proceedings before the Supreme Court, parties must be represented by advocates (*adwokaci*) or legal counsels (*radca prawni*). In cases concerning industrial property, they must also be represented by patent agents. The representation requirement applies also to procedural steps related to proceedings before the Supreme Court, taken before a court of lower instance. The representation requirement does not apply if proceedings concern an application for exemption from court charges, for appointing an advocate or a legal counsel, or if the party, its governing body or statutory representative or legal representative is a judge, public prosecutor, notary or professor of law or a post-doctoral degree holder in law (*doktor habilitowany nauk prawnych*), as well as if the party, its governing body or statutory representative is an advocate or a legal counsel or a counsel of the General Counsel to the State Treasury (*Prokuratoria Generalna Skarbu Państwa*).

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

Actions should be lodged with the competent court.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

Pleadings must be submitted to the court in Polish or with a translation into Polish enclosed. The statement of claim should be in written form. An exception is a situation (concerning labour and social security law)

in which an employee or an insured person acting without an advocate or a legal counsel may orally submit to the competent court an action, the content of legal remedies and other pleadings, to be included in the records.

In an electronic procedure by writ of payment, a pleading may be submitted also via a data transmission system.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

A statement of claim must be submitted on official forms only if a special provision provides for it. There are two situations where the statement of claim must be submitted on an official form: where the claimant is a service provider or seller and pursues claims under an agreement concerning a specific subject matter (the provision of postal and telecommunications services; mass transport of people and luggage; supply of electricity, gas and fuel oil; supply of water and removal of waste water; waste disposal and supply of thermal energy), and in summary proceedings (*postępowanie uproszczone*).

A statement of claim should be in written form. An exception to this rule are labour law and social security proceedings in which an employee or an insured person acting without an advocate or a legal counsel may submit an action orally to the competent court, to be included in the records.

A statement of claim must:

include the name of the court to which it is submitted; the names of the parties, their statutory representatives and legal representatives;

specify the type of pleading;

include the value of the subject of the dispute or of the appeal, if the material jurisdiction of the court, the fee amount or the admissibility of a legal remedy depends on that value and the specified amount of money is not the subject matter of the case;

specify the subject of the dispute;

specify the domicile or registered office and address of the parties, their statutory representatives and legal representatives,

include the claimant's PESEL (General Electronic Population Registration System) number or tax identification number (NIP) if the claimant is a natural person obliged to have such a number or has it without being obliged to have it; or include the claimant's National Court Register (KRS) number, and in the absence of a KRS number – the claimant's number in another relevant register or record, or, if the claimant is not a natural person and is not obliged to be entered in the relevant register or record but is obliged to have a NIP, include the claimant's NIP;

include the substance of the application or statement and evidence supporting the invoked circumstances;

precisely specify a claim, and in cases concerning property rights also indicate the value of the subject of the dispute, unless the subject of the dispute is a specified amount of money;

specify the date on which the claim fell due in cases where a payment order is sought;

describe the factual circumstances justifying the claim and, if necessary, justifying also the jurisdiction of the court;

indicate whether the parties have attempted mediation or another extrajudicial method of dispute resolution, and if no such attempts have been made, the reasons for not doing so;

bear the signature of the party or its statutory representative or legal representative;

include a list of appendices.

The following documents should be enclosed with the statement of claim:

the power of attorney or its certified copy (if the statement of claim is filed by a legal representative);

copies of the statement of claim and of its appendices to be delivered to the parties participating in the case, and if the originals of the appendices have not been submitted to the court, one copy of each for the court files (in an electronic procedure by writ of payment, electronically certified copies of appendices are to be enclosed with the statement of claim filed via a data transmission system).

Additionally, a statement of claim may include: applications for precautionary measures, for declaring the judgment immediately enforceable and for trying the case in the absence of the claimant; applications relating to the preparation of the hearing (and in particular applications: to summon the witnesses and court appointed experts indicated by the claimant to attend the hearing; to conduct a visual inspection; to instruct the defendant to provide, for the hearing, a document held by the defendant and necessary to hear the evidence, or the object of the visual inspection;

to request the provision of evidence held by other courts, offices or third parties for the hearing).

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

In principle, conducting court proceedings involves costs. Court costs include fees and expenses.

The obligation to pay the court costs rests on the party which lodges with the court a pleading (including a statement of claim) which is subject to a fee or generates expenses. If the due fee is not paid, the court summons the party to pay it within a week, otherwise the pleading will be returned (if the pleading has been lodged by a party domiciled or having its registered office abroad and not having a representative in Poland, the time limit for paying the fee is at

least a month). After the expiry of the time limit without the fee being paid, the court returns the pleading to the party. A returned pleading has no effects associated under law with the filing of a pleading with a court.

If a special provision provides that a pleading may be lodged only via a data transmission system (the EPU procedure), the pleading is lodged together with the payment of the fee.

Pleadings lodged by an advocate, a legal counsel or patent agent (if they are subject to a fee in a fixed or proportional amount calculated based on the value of the subject of the dispute specified by the party) which have not been duly paid for are returned by the court without the party being called upon to pay the fee (Article 1302 of the CCP). The party may pay the fee due within a week. If the fee is paid in the required amount, the pleading has legal effects from the date on which it was originally filed. Such an effect does not take place if the pleading is returned again for the same reason.

Issues concerning fees payable to advocates or legal counsels (such as deadlines for payment) should be regulated in an agreement between the client and the legal representative.

11 Can I claim legal aid?

Both natural persons and legal persons may apply for legal aid – a court-appointed legal representative to handle the case (*pełnomocnik z urzędu*).

Natural persons may request appointment of an advocate or a legal counsel if they submit a statement to the effect that they would not be able to pay an advocate's or a legal counsel's fee without hardship to themselves or their families.

Legal persons (or other organisational units entitled by law to be a party in court proceedings) may request appointment of an advocate or a legal counsel if they demonstrate that they do not have sufficient funds to pay an advocate's or a legal counsel's fee.

The court will grant the request if it finds the participation of an advocate or a legal counsel in the case necessary.

The issue of exemption from costs and the assignment of a court-appointed legal representative in cross-border disputes is regulated by the Act of 17

December 2004 on the right to legal aid in civil law proceedings conducted in the European Union Member States

and on the right to legal aid in order to resolve a dispute amicably before proceedings are instituted.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

An action is brought before the court upon the statement of claim being filed. The CCP does not provide for a certificate confirming that the case has been correctly brought before the court.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

Information about the steps planned or undertaken in the case can be obtained from the Court Customer Service Office (*Biuro Obsługi Interesanta*, BOI) of the relevant court. You can obtain information about the dates of subsequent court sessions by calling the Customer Service Office number specified on the court website and providing the case file number.

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