Small claims

Lenkija

1 Existence of a specific small claims procedure

A simplified procedure exists in Polish law. It is governed by Articles 5051 to 50514 of the Code of Civil Procedure.

The simplified procedure involves streamlining and optimising evidentiary and appeal proceedings by speeding up and simplifying court procedures and by introducing more stringent formal requirements for the parties and obliging them to act in a disciplined manner when taking action.

The Polish Code of Civil Procedure incorporates the European Small Claims Procedure. The Procedure was established by Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure with a view to streamlining and simplifying civil and commercial proceedings. The Regulation is applied in all EU Member States except Denmark. It was transposed into Polish law by Articles 50521 to 505 27a of the Code of Civil Procedure.

1.1 Scope of procedure, threshold

The simplified procedure is used in the following cases that fall within the jurisdiction of the district courts (sądy rejonowe):

claims under contracts, if the value of the claim does not exceed PLN 20 000, and, for claims under warranties or quality guarantees or claims resulting from the incompatibility of consumer goods with a consumer sales contract, if the value of the subject of the contract does not exceed that amount;

claims for payment of rent for dwellings and fees payable by tenants as well as fees for the use of a dwelling in a housing cooperative, irrespective of the value of the claim.

Under the case-law of the Supreme Court (Sąd Najwyższy), claims for non-performance or inadequate performance of an obligation should be considered under the simplified procedure if the value of the claim does not exceed PLN 20 000. If the claimant is pursuing an amount of less than PLN 20 000 that constitutes the remainder of a claim which has already been satisfied in an amount of more than PLN 20 000, this claim will also be considered under the simplified procedure. The phrase ‘under contracts’ means that claims resulting from unlawful acts, unjust enrichment and the existence of ownership of property, co-ownership or the community of rights or the existence of other property rights whose acquisition or exercise gives rise to a payment obligation may not be heard under the simplified procedure. Claims resulting from legal acts other than contracts may not be heard under this procedure either: unilateral legal acts, agency without authorisation, *legitima portio* and obligations arising from an administrative decision or directly from provisions of law.

The simplified procedure may be applied in cases involving natural persons and legal persons or businesses, employees and employers. As such, application of the procedure is not limited by the type of entity. This means that staff-related or economic matters may be considered under the simplified procedure.

The European Small Claims Procedure falls within the jurisdiction of district courts and regional courts (‘*sądy okręgowe*’) and officers of justice in accordance with territorial jurisdiction as specified in the Code of Civil Procedure (Article 16 of the Code of Civil Procedure, read in conjunction with Articles 17 and 505 (22) thereof).

In accordance with the Directive referred to above, small claims are claims in civil and commercial matters (including consumer matters) and cases in which the value of the claim, excluding interest and expenses, does not exceed EUR 5 000 (at the time when the claim form is received by the court with jurisdiction).

1.2 Application of procedure

Under Article 5053, any one set of proceedings under the simplified procedure can concern only one claim. Several claims may be combined into one claim only if they result from the same contract or contracts of the same type. If several claims are unlawfully combined into one claim, the presiding judge will order the claim to be returned under Article 1301 of the Code of Civil Procedure following unsuccessful action to rectify this formal irregularity. If the claimant is pursuing part of a claim, the case will be considered under the simplified procedure if that procedure would be appropriate for the entire claim arising from the facts invoked by the claimant. Claims cannot be changed under the simplified procedure. Counterclaims and set-offs are permitted if claims are eligible to be considered under the simplified procedure. Primary intervention, secondary intervention, third-party notices and party changes are not permitted.

Cases are considered under the simplified procedure irrespective of the wishes of the parties, which means that this procedure is obligatory.

1.3 Forms

Under the Code of Civil Procedure (Article 5052 read in conjunction with Article 125(2)), all pleadings, including claims, statements of defence, applications to set aside default judgments or pleadings containing evidence offered during the simplified procedure, should be submitted on official forms.

Official forms are available from municipal offices, court registry offices and on the website of the Ministry of Justice (http://bip.ms.gov.pl/pl/formularze).

Failure to use a required form constitutes a formal irregularity.

Under the general provisions of the Code of Civil Procedure (Article 130 thereof), if a pleading that should have been submitted on an official form has been submitted in another way or cannot be processed because other formal conditions have not been met, the presiding judge requests the party to rectify the irregularities within one week and sends the pleading to that party. A request to rectify irregularities should specify all the irregularities found in the pleading. If the party does not comply by the time the deadline expires or an irregular pleading is re-submitted, the presiding judge will order that the pleading be returned.

Under the European Small Claims Procedure, there are four standard forms, attached as annexes to the Regulation referred to above. These are: a claim form, a form for a request by a court or tribunal to complete or rectify a claim form, an answer form and a certificate concerning judgments handed down in the European Small Claims Procedure.

1.4 Assistance

The principle of concentration of evidence applies in the simplified procedure. The court will disregard assertions and allegations made by the parties and motions for evidence submitted by them after a claim, counterclaim or application to set aside a default judgment is lodged or after the first session designated for a hearing is concluded (preclusion system), unless the party demonstrates that they could not be, or need not have been, submitted earlier (judge’s discretion).This is due to the speed of the simplified procedure. If the court concludes that it is impossible or very difficult to conclusively prove the amount of a claim, it may specify an appropriate amount in the judgment at its discretion, after considering all facts of the case. If the court concludes that the case is particularly complex or specific knowledge is required to resolve it, the case will be examined under the usual procedure. The court may summon

witnesses and other persons in the manner it considers the most expedient to minimise the costs of the simplified procedure. In order to speed up the simplified procedure, expert opinions are not deemed admissible (Article 5056). In order to speed up the simplified procedure, expert opinions are not deemed admissible (Article 5056 of the Code of Civil Procedure).

1.5 Rules concerning the taking of evidence

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1.6 Written procedure

As a rule, the simplified procedure is a written procedure. Most applications by the parties should be submitted on special official forms. However, applications may also be lodged verbally under the simplified procedure. A party may apply for the grounds of a judgment to be set out directly after the judgment is handed down (Article 5058). A party present at the session during which the judgment is handed down may waive its right of appeal by way of a statement lodged after the judgment is handed down. If all eligible parties waive the right of appeal, the judgment becomes final and binding.

The European Small Claims Procedure is a written procedure (Article 125(2), read in conjunction with Article 505(21) of the Code of Civil Procedure).

1.7 Content of judgment

If the court concludes that the case is particularly complex or specific knowledge is required to resolve it, then, in accordance with Article 5057 of the Code of Civil Procedure, the case may be examined by that court under the usual procedure. In that case, no supplementary fee is charged. The case is examined by the court which first heard it, under an appropriate procedure other than the simplified procedure. A court decision under Article 5057 should be handed down during a hearing as a decision that cannot be appealed.

1.8 Reimbursement of costs

Claimants are charged a fee for lodging a claim under the simplified procedure, as is the case under the usual procedure. However, fees for claims under the simplified procedure are governed by different rules, namely Article 28 of the Court Fees (Civil Cases) Act of 28 July 2005. The Article provides for a flat-rate fee, depending on the amount of the claim or the subject of the contract. The following fees are charged for the following amounts:

up to PLN 2 000: a fee of PLN 30;

between PLN 2 000 and PLN 5 000: a fee of PLN 100;

between PLN 5 000 and PLN 7 500: a fee of PLN 250;

over PLN 7 500: a fee of PLN 300.

Under the simplified procedure, costs are settled between the parties in accordance with the general rules set out in Articles 98 to 110 of the Code of Civil Procedure. Under Article 98 of the Code of Civil Procedure, the unsuccessful party is required to reimburse the costs associated with the pursuit of rights and defence to the other party on request. The court awards costs in each judgment concluding a case in a particular instance.

1.9 Possibility to appeal

Judgments handed down under the Regulation may be appealed in the court of appeal. If the judgment was handed down by the district court, the appeal is lodged via that court with the regional court, and if the judgment was handed down by the regional court, the appeal is lodged via that court with the court of appeal ('*sąd apelacyjny*') (Articles 367 and 369 of the Code of Civil Procedure, read in conjunction with Articles 505(26) and 505(27) thereof).

If the conditions set out in Article 7(3) of the Regulation are fulfilled, the court hands down a default judgment. The defendant may appeal against a default judgment to the court which handed down the judgment. If the outcome of a case is unfavourable, the claimant may appeal under the general rules (Articles 339(1), 342 and 344(1) of the Code of Civil Procedure).

Last update: 18/10/2019

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