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Small claims

 Poland

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European Judicial Network
(in civil and commercial
matters)

1 Existence of a specific small claims procedure

Polish law provides for a 'simplified procedure'. It is governed by Article 505(1-14) of the Code of Civil Procedure ('CCP') (*Kodeks postępowania cywilnego*).

The simplifications aimed at improving the speed of proceedings consist in streamlining and optimising the taking of evidence and appeal proceedings by expediting court procedures and making them less formal, as well as in introducing more stringent formal requirements for the parties to ensure that they comply with the relevant deadlines for taking procedural steps.

The Polish Code of Civil Procedure also incorporates the European Small Claims Procedure. The procedure was introduced 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 has been transposed into Polish law by Article 505(21-27a) of the Code of Civil Procedure.

1.1 Scope of procedure, threshold

Cases examined under the simplified procedure are actions for performance where the value of the claim does not exceed PLN 20 000 and cases concerning claims under a warranty or guarantee (where the value of the subject-matter of the contract does not exceed that amount).

However, the following cases are not examined under the simplified procedure:

- (1) cases within the jurisdiction of regional courts (*sądy okręgowe*);
- (2) matrimonial cases and cases concerning relations between parents and children;
- (3) labour-law cases examined with the involvement of lay judges;
- (4) social insurance cases (with certain exceptions).

The European Small Claims Procedure falls within the jurisdiction of the district courts (*sądy rejonowe*) and the regional courts in accordance with the territorial jurisdiction laid down in the Code of Civil Procedure (Article 16 of the Code of Civil Procedure in conjunction with Articles 17 and 505(22) thereof). In such cases, judicial clerks may issue orders.

In accordance with the Regulation 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 all 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 505(3), any one application under the simplified procedure can concern only one claim. Several claims may be combined in a single application only if they result from the same contract or contracts of the same type. In the event of several claims being inadmissibly combined in a single application, the presiding judge will order that the application be dismissed without an action to rectify that irregularity. If within a week of receiving the order concerning the dismissal the claimant withdraws the application as regards the claims that cannot be combined, the application continues to have effect as to the remainder from the date it was originally submitted.

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 under the simplified procedure cannot be modified. Counterclaims and set-offs are permitted if claims are eligible to be examined under the simplified procedure. Primary intervention, secondary intervention, third-party notices and party substitutions 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 125(2)), all pleadings, including applications, statements of defence, applications to set aside judgments by default or pleadings containing evidence submitted during the simplified procedure, should be submitted on official forms.

Official forms are available from municipal offices (urzędy gmin / miast), country registry offices (biura podawcze sądów) and on the website of the Ministry of Justice <https://www.gov.pl/web/sprawiedliwosc/formularze-pism-procesowych-w-postepowaniu-cywilnym>. Failure to use a required form constitutes a formal irregularity.

Under the general provisions of the Code of Civil Procedure (Article 130 (1) 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:

- the claim form;
- the request by the court or tribunal to complete and/or rectify the claim form;
- the reply form;
- the certificate concerning a judgment in the European Small Claims Procedure.

1.4 Assistance

If the court concludes that it is impossible or very difficult to conclusively prove the amount of a claim, it may award an appropriate amount in the judgment at its discretion, after considering all the facts of the case. When examining a case, a court may disregard the rules on the simplified procedure, where this may contribute to a more efficient resolution of the dispute (Article 505(1) § 3 of the Code of Civil Procedure). Where specific knowledge is required to determine the merits and amount of the claim, it is at the court's discretion to carry out an independent assessment taking account of all the circumstances of the case or to seek an expert opinion. No expert opinion is sought where the anticipated cost of an opinion exceeds the value of the claim, unless justified by special circumstances. The fact that a witness has given testimony does not preclude them from being consulted as an expert, including in respect of facts to which they testified, even if the witness has already drawn up an opinion at the request of an entity other than the court (Article 505(7) of the Code of Civil Procedure).

1.5 Rules concerning the taking of evidence

Where specific knowledge is required to determine the merits and amount of the claim, it is at the court's discretion to carry out an independent assessment taking account of all the circumstances of the case or to seek an expert opinion. No expert opinion is sought where the anticipated cost of an opinion exceeds the value of the claim, unless justified by special circumstances. The fact that a witness has given testimony does not preclude them from being consulted as an expert, including in respect of facts to which they testified, even if the witness has already drawn up an opinion at the request of an entity other than the court (Article 505(7) of the Code of Civil Procedure).

1.6 Written procedure

In principle, the simplified procedure is a written procedure. Most requests by the parties should be submitted on special official forms. However, requests may also be lodged verbally under the simplified procedure. 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 (Article 505(8) § 3 of the Code of Civil Procedure).

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

1.7 Content of judgment

When examining a case, a court may disregard the rules on the simplified procedure, where this may contribute to a more efficient resolution of the dispute. A court decision under Article 505(1) §3 of the Code of Civil Procedure should be delivered at the hearing as a decision against which there is no appeal.

1.8 Reimbursement of costs

Claimants are charged a fee for lodging an application under the simplified procedure, as is the case under the usual procedure. Under the simplified procedure the rules concerning fees for applications are based on the general rules laid down in the Court Fees (Civil Cases) Act of 28 July 2005.

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 at the request of the other party to reimburse the costs of justifiably asserting or justifiably defending their rights. The court awards costs in each judgment concluding a case in a particular instance.

1.9 Possibility to appeal

An appeal may be brought before a court of appeal (*sąd apelacyjny*) against judgments delivered under the Regulation. If the judgment was delivered by a district court, the appeal is lodged via that court with a regional court, and if the judgment was delivered by a regional court, the appeal is lodged via that court with a court of appeal (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 bring an appeal under the general rules (Articles 339 §1, 342 and 344 §1 of the Code of Civil Procedure).

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