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Proceedings in matters of labour law after the amendment to the Polish Code of Civil Procedure

Postępowanie w sprawach z zakresu prawa pracy po nowelizacji kodeksu prawa cywilnego

Abstract
The article is devoted to the presentation of changes made by the Act of July 4, 2019 and the Act of May 16, 2019 amending the Act — Labour Code and some other acts, but only to the extent that affects the current shape of separate proceedings in the matters of labour law. The two cited acts include changes that have a breakthrough significance from the point of view of applying the law, those of terminological character as well as technical and organizational ones, aimed at removing current ambiguities that can be considered as ordering. The order of the changes adopted by the author determines the stages of proceedings in the matters related to labour law. The article essentially focuses on presenting the most important changes in the Code of Civil Procedure, but the author does not avoid their assessment.

Keywords
proceedings in matters of labour law, separate proceedings, civil proceedings, obligatory response to a lawsuit, preparatory proceedings, abuse of procedural law

Streszczenie
Artykuł jest poświęcony przedstawieniu zmian dokonanych ustawą z 4 lipca 2019 r. oraz ustawą z 16 maja 2019 r. o zmianie ustawy — Kodeks pracy oraz niektórych innych ustaw, ale jedynie w zakresie mającym wpływ na obecny kształt postępowania odrębnego w sprawach z zakresu prawa pracy. Dwie przywołane ustawy obejmują zarówno zmiany mające przełomowe znaczenie z punktu widzenia stosowania prawa, jak również takie o charakterze terminologicznym, jak i technicznoorganizacyjnym, mające na celu usunięcie dotychczasowych niejasności, które można uznać za porządkujące. Przyjętą przez Autorkę kolejność omawianych zmian wyznaczają etapy postępowania w sprawach z zakresu prawa pracy. Artykuł zasadniczo koncentruje się na przedstawieniu najważniejszych zmian k.p.c., autorka jednak nie stroni od ich oceny.

Słowa kluczowe
postępowanie w sprawach z zakresu prawa pracy, postępowanie odrębne, proces cywilny, obligatoryjna odpowiedź na pozew, postępowanie przygotowawcze, nadużycie prawa procesowego

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Introductory notes

On 4th July 2019, the *Law on amendments of the Code of Civil Proceedings and of some other laws*[1] was adopted. This is a subsequent vast amendment to the civil process law[2] , different from the previous ones by the fact that for the first time, it has not been consulted with the academic environment. The *vacatio legis* of the amendments introduced by this law varied, but most of them, those related to the labour law proceedings, in particular, started to be in force as on 7th November 2019.

The amendment includes both changes which have a breakthrough significance from the point of view of the law to be applied, as well as those of a terminological as well as technical and organizational nature, with the purpose to remove the existing ambiguities that can be considered as introducing some new order.

According to the assumptions of each amendment, on principle, including the recent one, the amendments suggested to the provisions and the introduction of new legal figures to the C.C.P. are to streamline and accelerate civil proceedings, in particular court proceedings. In the hitherto opinions of scholars on the

newly introduced changes in the C.C.P., it can be already noticed that this assumption will not be put into life. On the other hand, practitioners and theoreticians agree that such a comprehensive amendment to civil procedural law is an enormous challenge not only for judges, lawyers, legal advisers, but, first of all, for the parties and participants in proceedings.

The article introduces the changes to the C.C.P. adopted by the 4th July 2019 law and the 16.05.2019 *Law on amendments to the Labour Code and to some other laws*[3], in force from 07.09.2019, including these provisions of the C.C.P., whose change had an impact on the current shape of separate proceedings in Labour Law cases.

Competence of the court

The amendments to the C.C.P. made by the 4th July, 2019 law, introduced a number of changes in the provisions on court jurisdiction in the part covering Chapter I, Title I, of Book 1 — *Process*, of which only Article 18 and 25 of the C.C.P. and the provisions which deal with seconded competence (Articles 44, 44^1 and 45 of the C.C.P.) can be applied in Labour Law cases. In Articles 44 and 45 of the Code of Civil Proceedings, relatively small changes were introduced, however, in the newly added Article 44^1 of the C.C.P. the Supreme Court's right to refer the case to another court, of an equivalent level with the court judging the case is introduced when it is required by the interest of justice.

The change of Article 461 of the C.C.P. which deals with the local and material jurisdiction of a court in Labour Law cases, includes para. 1 and 3. The first of them consists in the legislator renouncing from the wording of the "workplace" to set out the local jurisdiction. *De lege lata*, Article 461 para. 1 of the C.C.P. deals with alternating jurisdiction, allowing the claimant to choose between a court generally competent for the defendant and the court in whose jurisdiction the work is, was or was to be carried out. As to the other change, however, which consists in deleting the second and third sentences of para. 3 of Article 461 of the C.C.P., this is related to para. 3 newly added to Article 148 of the C.C.P. and the wording of Article 200 para. 2 of the C.C.P. In this way, the legislator avoided doubling the provisions. Still, however, the decision upon a joint request of the parties to refer a Labour Law case by a court competent to another court of equivalent level, which can examine this type of cases for reasons of purposefulness may be taken in closed session, although the legal basis for its issuing will be different (Article 148 para. 3 of the C.C.P.). Similarly as up to now, the court to which the case was referred will be bound by the referral, but the base therefor will be Article 200 para. 2 of the C.C.P.

The statement of claims and the reply to the claims

The current course of proceedings in Labour Law cases was under the impact of not only the changes introduced in Chapter III, Title VII, Book One — *Process*[4] , which addressed these separate proceedings, but also of other changes in the C.C.P., the court examination proceedings in civil process procedure, run on general principles included. Significant changes, also for the separate proceedings in Labour Law cases, include new solutions in the field of formal conditions for process writs (Articles 126, 127, and 187 of the C.C.P.), their validation (Article 130, 130^{1a} of the C.C.P.) and an obligatory reply to the statement of claims (Article 205^2 of the C.C.P.).

As a result of the amendment, Article 126 of the C.C.P. has been re-edited. The amendment of para. 1 of this provision is of a technical and organizational nature. The wording of Article 126 para. 1 point 5 of the C.C.P. is a novelty, from which it follows that the writ of the party shall contain an indication of the facts on which the party bases its conclusion or statement, and an indication of evidence to make these facts plausible. The addition of Article 126 para. 1^1 of the C.C.P. seems to be irrelevant as Article 128 of the C.C.P. is still in force. However, now, this provision leaves no doubt that when the attachment mentioned in the writ is missing, this constitutes a formal failure of a process writ, subject to the requirements of Article 130 or 130^{1a} of the C.C.P.

The legislator slightly modified Article 187 of the C.C.P., introducing a terminological change, consisting in replacing "factual circumstances" with "facts" (Article 187 para. 1 point 2 of the C.C.P.). As to para. 2 point 4 of Article 187 of the C.C.P., it left the claimant the opportunity to request evidence held by courts, offices or third parties, but it has been supplemented by the obligation to prove that the party cannot obtain the evidence on their own. Therefore, it is not sufficient to request simply such evidence.

As the proceedings in Labour Law cases may cross with those of simplified proceedings (Article 505^{14} of the C.C.P.) (Mędrala, 2010, p. 361 *et seq*.), the changes in the proceedings, belonging to the so-called accelerated proceedings are also worth mentioning (Cieślak, 2004, p. 3 *et seq*.). First of all, it needs to be noted that in the objective scope of simplified proceedings in which the cases for benefit are currently cognized has changed by those whose value of the object of dispute does not exceed PLN 20 000, and not only claims, arising from contracts (Article 505^1 para. 1 of the C.C.P.). The cases laid down in para. 2 of Article 505^1 para. 1 of the C.C.P., including labour law cases, heard with the participation of lay judges (Article 505^1 para. 2 point 3 of the C.C.P.) have been excluded from this scope. In addition, the legislator did away with the obligation to use official forms, however, not renouncing of them entirely[5]. The parties may use the official form when submitting a writ[6].

In Labour Law cases, such solutions as oral statement of claims, appeals and other writs, coming from an employee who acts without a lawyer or legal advisor have been maintained (Article 466 of the C.C.P.) similarly to the removal of shortage in the document,

instituting proceedings, establishing of evidence which the court shall admit *ex officio*, and other circumstances of importance to the proper and speedy hearing of the case (Article 467 para. 3^1 and 3^2 of the C.C.P.), applied to reduce formalities of the process and, at the same time, to facilitate employees the pursuit of their claims.

The introduction of an obligatory reply to a statement of claims is of particular significance, not only for proceedings in Labour Law cases, which is a consequence of the broadly laid down reconstruction of the cognizance proceedings, to emphasize the proper organization of the proceedings[7]. The defendant's taking position in the case in the reply to the statement of claims, and not as late as at the first sitting, makes it easier for the court to find out the disputed circumstances, to assess preliminarily which of the evidence requested by the parties shall be carried out and which is unnecessary, given the parties' positions.

Pursuant to Article 205^1 of the C.C.P., ordering the statement of claims to be served on the defendant, the court obliges the latter to submit a reply to the claims within a deadline set out, not shorter than two weeks[8] . The reply to the claims submitted after the deadline is returned. The court will instruct the defendant on the consequences of failure to submit a reply to the claims, of submitting it after the deadline, or failing to attend the preparatory sitting, if any (Artitcle 205^2 of the C.C.P.).

The sanction for the defendant's failure to reply to the statement of claims (or equal thereto submitting it in breach of the deadline) may be the court's judgment by default. By the introduction of an optional right to issue a default judgment in closed session, the legislator allows the court to assess whether at this stage it is advisable to issue a judgment (Article 339 para. 1 of the C.C.P.).

Pursuant to the assumptions expressed in the explanatory notes to the bill, the organization of proceedings, covering the actions of the parties and those of the court is to consist in planning. In consequence, to be able to plan the proceedings (hearing) properly, the court must know the claims, allegations on facts and evidentiary requests of all parties, which will allow to take appropriate steps to resolve the dispute that led the parties to the court. Learning the position of both parties (i.e. the claimant's from the content of the statement of claims and the defendant's from the reply thereto) at the initial stage of the proceedings, facilitates further organizational and preparatory actions.

Additionally, in Article 127 of the C.C.P. the legislator imposed on the party that initiates the preparatory writ the obligation to specify which facts they admit and which they deny (Article 127 para. 1 of the C.C.P.). This solution will help to avoid using in practice, mainly by professional attorneys of a legal figure known on the ground of the former C.C.P.[9] as so-called simple denial (*negatio simplex*) (Waśkowski, 1932, p. 202 *et seq.*)[10], and in the German civil trial as empty denial (*bloßes Leugnen oder leeres, unsubstantiiertes, einfaches Bestreiten*) (Arens and Lüke, 2004, pp. 172–173; Dolinar and Holzhammer, 2005, p. 20; Meier and Sogo, 2010, p. 295 *et seq.*). The editing of this provision leaves no doubt as to the current meaning of facts admitted (Article 229 of the C.C.P.) and tacitly admitted (Article 230 of the C.C.P.).

After submitting the reply to the claims, and also when the reply to the claim has not been submitted, but the default judgment has not been issued, the presiding judge, in order to prepare the proceedings properly, appoints a preparatory sitting and summons the parties thereto.

Organization of the proceedings/ /preparatory proceedings

The introduction of the preparatory proceedings to the C.C.P. by the 4th July, 2019 law led to both a fundamental change of Article 467 of the C.C.P. and the repeal of Article 468 of the C.C.P., dealing with the legal figure of preliminary examination of cases and explanatory actions, characteristic for separate proceedings in labour law and social security cases.

The new provisions, dealing with the organization of proceedings, in particular the course of the preparatory sitting included, due to their location in the law, have evidently a much wider application, but on principle, they fulfil the same objectives as those, underlying the introduction in the proceedings of labour law cases of the legal structure related to initial examination of the case and explanatory procedures.

The preparatory proceedings, as indicated by their location in the law (Articles 205^1–205^{12} of the C.C.P.) apply to cases heard in court hearings in civil proceedings, i.e. in proceedings based on general principles (referred to as ordinary) as well as in separate proceedings, and in other types of proceedings to which the provisions on civil proceedings shall apply accordingly (Article 13 para. 2 of the C.C.P.). In this way, the legislator emphasized the importance of proper preparation of proceedings for their efficiency. According to the assumptions, the proper preparation of the proceedings is due to facilitate the examination of the case at one sitting. The essential part of the preparatory proceedings is the preparatory sitting, in which the effectiveness of the proceedings was emphasized, at the expense of the rules and formalism thereof. The role of the court was also changed, as it is to act as a kind of "mediator" and not an impartial arbitrator (Machnikowska, 2020, p. 490 *et seq.*). The presiding judge shall encourage to reconciliation and seek a friendly settlement of the dispute, in particular through mediation. For this purpose, the presiding judge may search together with the parties the ways of amicable settlement of the dispute, support them in drawing up settlement suggestions and indicate the ways and results of dispute resolving, financial ones included (Article 205^6 para. 2 of the C.C.P.). In the preparatory proceedings, it is not necessary to keep to the specific

procedural provisions, when this could contribute to the objectives of this proceeding being achieved (Article 205^5 para. 2 of the C.C.P.).

Following the assumptions of the legislator, the objectives of the preparatory sitting in employee cases have been broadened when compared to the objectives in the so-called 'ordinary' proceedings (Article 467 para. 3^1–3^2 of the C.C.P.), owing to which they take under consideration the specificity of labour law cases, consisting in a milder approach to formal and substantive shortages in the statement of claims and a less restrictive approach to admitting evidence *ex officio*[11]. Pursuant to Article 467 para. 3^2 of the C.C.P., the preparatory sitting focuses on three issues, namely: remedying the shortages in the document which initiates the proceedings, establishing the evidence that the court will admit *ex officio*, if needed, and other circumstances relevant for the speedy and proper hearing of the case.

Remedying the shortages of the document, initiating the proceedings is to take place exclusively to the extent necessary to give the case a proper start. This regulation is much more liberal than the solutions of Article 130 of the C.C.P., which provide for the necessity to summon the party to remedy the missing details when the writ cannot be correctly given a start. Whereas Article 467 para. 3^2 of the C.C.P. will apply only if the case, and not only the writ, cannot be started correctly.

Pursuant to para. 3^1 newly added to Article 467 of the C.C.P., the party submitting the writ shall be summoned to remedy it, before the preparatory sitting only when its shortages prevent the sitting from being held with the participation of the party submitting the writ[12]. In the remaining scope, the actions are undertaken by the court already at the preparatory sitting.

The new solutions, regarding the preparatory sitting are similar to the explanatory actions taken by the court, whose purpose was also to remedy the shortages of formal pleadings, in particular, to explain more precisely submitted requests; in labour law cases — to clarify the parties' positions and encourage them to reconcile and to settle the case; to set out which circumstances relevant to the resolution of the case are the object of dispute between the parties, and whether and what evidence shall be taken to clarify them, as well as to explain other circumstances relevant to the correct and speedy resolution of the case (repealed Article 468 para. 2 of the C.C.P.). Newly added Article 467 para. 3^2 of the C.C.P. took over, although in a changed scope, three of these activities, apart from explaining the positions of the parties and encouraging them to reconcile and to settle the labour law case. Now, this task belongs to the presiding judge, who during the preparatory sitting shall encourage the parties to reconcile and do their best for amicable settlement, in particular through mediation (Article 205^6 para. 2 of the C.C.P.).

The preparatory sitting, as stipulated in Article 467 para. 3^2 of the C.C.P., also serves, if needed, for the court to lay down evidence to be taken *ex officio*. Article 232 of the C.C.P. is applied in proceedings in labour law cases, according to which the parties are required to provide evidence for facts from which they derive legal effects, and the court may (but is not obliged to) admit evidence not indicated by the party.

The separate nature of the proceedings does not exclude the adversarial principle, including the burden of proof that arises from Article 232 of the C.C.P. The obligation to indicate the evidence needed to resolve the case is borne by the parties, and the court is exceptionally entitled to admit other evidence not indicated by the parties, based on its own assessment. Pursuant to the case-law, the court shall take evidence *ex officio* in particularly justified cases, so as to protect the employee's interest (confer: judgment of the Supreme Court of 22.10.1997, I CKU 140/97, LEX No. 50620, resolution of the Supreme Court (7) of 19.05.2000, III CZP 4/00, LEX No. 40098).

As a rule, the preparatory sitting is obligatory, it is held according to the provisions on closed session in camera and it serves to resolve the dispute without the need for further sittings, in particular without the hearing. Its purpose is to streamline proceedings by enabling the court to take certain actions in a simplified manner, outside the trial, whose effect is to lead to accelerated examination and resolution of the case.

The literature on the subject already underlines that courts may more often use the opening provided for in Article 205^4 para. 3 of the C.C.P. (Machnikowska, 2020, p. 498). Pursuant thereto, if the circumstances of the case indicate that conducting a preparatory sitting will not contribute to a more efficient examination of the case, the presiding judge may direct it to another appropriate proceedings, in particular to be examined, also at the hearing. In ordinary proceedings, this solution is a *novum*, providing a completely new role for the court, new activities, and the scheduling of a preparatory sitting will require to organize another court session outside the standard session days. There seems to be no such risk in proceedings in labour law cases. The legal figures of the case preliminary examination and taking up by the court of explanatory actions have become so strongly marked in the labour law cases proceedings that the current regulation is a modified form of previous structures. The provisions of preparatory proceedings, in particular, the nature of employee cases, in particular during the employment relationship, justifies the need to conduct the proceedings in such a way, as to avoid as far as possible any more antagonism between the parties to this legal relationship.

Two new provisions, added by the 4th July, 2019 Law are also noteworthy: the first of them introduces a controversial solution, according to which, if it is necessary, the presiding judge can instruct the parties at the sitting about the likely outcome of the case in the light of the statements and evidence submitted so far (Article 156^1 of the Labour Code). In conjunction with the application of the solution from Article 205^6 para. 2

of the C.C.P., according to which the presiding judge shall encourage the parties to reconcile and strive for an amicable settlement of the dispute, it is possible that a party, afraid of a preliminary assessment of the court (which does not always mean the correct one) may find that continuing the proceedings does not make sense. In such a case, the party, acting without a professional attorney may interpret this kind of court instruction as a form of pressure to encourage them to reach a settlement. The other solution, on the other hand, imposing on the court an obligation to warn the parties about their chance to settle the case on a different basis than that indicated in the request or application, is fully approved (Article 156^2 of the C.C.P.).

Regardless of that, at the preparatory sitting, the presiding judge sets out the object of the dispute with the parties and makes them explain their positions, the legal aspects of the dispute included (Article 205^6 para. 1 of the C.C.P.). The presiding judge may also impose on the party with a lawyer, a legal advisor, a patent attorney or the State Treasury Solicitors' Office of the Republic of Poland to indicate the legal grounds for their requests and applications (Article 205^3 para. 4 of the C.C.P.).

Time frame for hearing the case

As results from the justification of the 4th July 2019 bill, a general shortening of the proceedings before civil courts shall follow the introducing of the solutions related to the organization of proceedings, in particular, this shall contribute to the elimination of excessive length of proceedings. Regardless of the legislator's expectations, in view of the newly introduced preparatory proceedings, there are several regulations introduced into the C.C.P. which deal with the expected date of the case hearing. Such a regulation is, among other provisions, Article 471 of the C.C.P. , according to which the presiding judge and the court shall act so that the date of the sitting at which the case is to be heard falls not later than one month after the day the preparatory sitting was completed, and if it has not been held — not later than six months from the day of submitting the reply to the statement of claims. In the opinion of the project promoter, currently the legislator, this term takes into account the reality of the current excessive burden of common courts. It was emphasized in the justification of the bill that in labour law cases, it is reasonable to keep the deadline, but not as it was earlier by the imposition on the court of the duty to hold the sitting but by imposing on the court and the presiding judge the obligation to take appropriate action for this purpose. Given the current workload burdening excessively the courts and judges, the risk of failure to meet this time frame is, however, so high that it cannot have procedural effects; the deadline remains instructional in nature and refers not to the actual conduct of the sitting, but to the steps taken to start it[13].

Compared to the previous wording of Article 471 of the C.C.P. before the amendment of 4th July, 2019, the type of court session at which the case is to be heard was changed (sitting instead of hearing), the time frame for scheduling the sitting was extended, and the obligation of the court to conduct the hearing was replaced by the imposition on the presiding judge and the court of the obligation to act so as to meet the time frame set out in this provision. The time frame from Article 471 of the C.C.P. has the nature of a mere postulate and expresses the legislator's aim to have a speedy and efficient examination of the case. An action of the presiding judge and the court in excess of this time frame has no impact on the efficiency of the proceedings.

Evidentiary proceedings

The most important changes in the C.C.P. with reference to evidentiary proceedings that apply in the field of labour law cases include: expanding the catalogue of facts that do not require proof by those the information about which is publicly available (Article 228 para. 2 of the C.C.P.); setting out the requirements for an evidentiary motion (Article 235^1 of the C.C.P.); giving a catalogue of grounds for omitting evidence (Article 235^2 of the C.C.P.); imposing on the party which requests a witness, expert or any other person be summoned to the trial, an obligation — although not subject to sanction — to make sure that the person appears at the scheduled time and place (Article 242^1 of the C.C.P.).

In turn, in the regulations related to individual items of evidence, Article 243^2 of the C.C.P. needs attracting attention of the readers. According to it, documents contained in the case files or attached to them constitute evidence without issuing a separate decision. When not admitting evidence from such a document, the court issues a decision. The right to take a witness testimony in writing if the court so decides is a new solution also (Article 271^1 of the C.C.P.), as well as hearing a witness with the participation of an expert doctor or psychologist, if the court has doubts as to their ability to perceive or communicate what they think (Article 272^1 of the C.C.P.). The newly added Article 278^1 of the C.C.P., which allows the court to admit evidence from an opinion drawn up at the request of a public authority in other proceedings provided for by the law will certainly help to lower costs. Such opinions, earlier, until the entry into force of the amendment, i.e. until 7th November, 2019, could not be treated as evidence from an expert opinion, they were only evidence from a private document (so decided the Supreme Court in the judgments: of 9th November, 2011, II CNP 23/11, LEX No. 1110965; of 10th October, 2012, I UK 210/12, LEX No. 1284721; of 16th May, 2017, I UK 207/16, LEX No. 2312494; of 7th March, 2013, II CSK 422/12, LEX No. 1314390; Knoppek, 2016, pp. 428–431). In the process of proving, this document was assessed, according to the general principles provided for in Article 233 of the C.C.P. in conjunction with Article 245 of the C.C.P.

It is also worth underlining that to face the needs of the practice of the law exercising, the legislator decided to apply in cognizance proceedings a regulation which before had been binding only in enforcement proceedings (Article 760 § 2 of the C.C.P.,) (Dziurda, 2020, p. 573 *et seq.*). This was achieved by adding Article 226^{1} of the C.C.P., according to which, whenever the law provides for the hearing of parties or other persons, as appropriate in the circumstances, this may be done by summoning the parties to testify at the hearing or by setting out a time frame to take a position in a process writ or by means of distance communication, insofar as there is a certainty as to the person, making the declaration.

The most important changes, with regard to the scope of judging

Judgment replacing an employment certificate

By the 16th May, 2019 Law, amending the Law — the Labour Code and some other laws[14], with effect from 7th September, 2019, four completely new provisions were added to the Code of Civil Proceedings (Article 477^{1a}, 477^{1b}, 691^{10} and 691^{11}). The first two ones were placed in the separate proceedings in labour law cases and relate to the situations when an employee initiates an action to impose on the employer the obligation to issue an employment certificate. However, if it turns out that the employer does not exist anymore or for other reasons it is impossible to initiate the action against them, the court will cognize the request in non-litigious proceedings as a request to determine the right to receive an employment certificate (Article 477^{1a} of the C.C.P.). For the purpose of examining the cases of employees' motion to set out the right to receive an employment certificate in this manner, the legislator added a new IVb chapter, entitled "Labour law cases", which was placed in the second book "Non-litigious proceedings" in Title II "Provisions for individual types of cases" (more in: May, 2020, p. 1378 *et seq.*).

The employer's obligation to issue an employment certificate which gives the employee the right to the claim for this document results from Article 97 para. 1 of the Labour Code[15]. Pursuant to its content, the employer shall issue the employee an employment certificate immediately after the employment relationship is terminated or has expired, if the former does not intend to enter into another employment relationship with the latter, within 7 days from the date of termination or expiry of this employment relationship. The employment certificate refers to the period or periods of employment for which no employment certificate has been issued so far.

The newly added Article 477^{1a} of the C.C.P. allows to determine in which of the two systems of court examination the court will cognize the employee's request for the employment certificate. The employee's claim may be exercised in civil process by initiating an action for the issuance of an employment certificate or in non-litigious proceedings, by submitting an application for establishing the right to receive an employment certificate. The rule is that the case for issuing an employment certificate shall be cognized in a civil trial. However, if the case is not eligible for cognizance in a civil trial, then, the court will cognize it in non-litigious proceedings. In this way, the employee can obtain a decision, to replace the employment certificate even if the employer does not exist any longer.

In turn, Article 477^{1b} of the C.C.P. lays down the content of the judgment which finds for the employee, awarding their claim, which shall contain the elements required in the employment certificate (Article 477^{1b} para. 1 of the C.C.P.), legal effects of a final judgment, imposing on the employer the obligation to issue the employment certificate (Article 477^{1b} para. 2 of the C.C.P.) and the referral to the appropriate application of Article 477^{1b} para. 1 and 2 of the C.C.P. to request that the employment certificate be rectified (Article 477^{1b} para. 3 of the C.C.P.). Owing to the solution adopted in Article 477^{1b} para. 2 of the C.C.P. it is superfluous to impose on the employer the obligation to issue or correct an employment certificate, since the final judgment replaces that certificate. This is a great convenience for an employee who, without having to initiate enforcement proceedings, will obtain a judgment, which replaces the employment certificate.

Article 477^{1b} para. 1 and 2 of the C.C.P. shall apply respectively to the request to rectify an employment certificate, with the difference, however, that finding for the employee in their action for issuing an employment certificate, the court must state all the information necessary for the judgment to correspond to the content of an employment certificate (Article 477^{1b} para. 1 of the C.C.P.), whereas if the employer issued an employment certificate which, according to the employee, does not contain some information that it shall contain (Article 97 para. 2 of the Labour Code and para. 2 of the Regulation on the employment certificate)[16], or contains erroneous information, the employee shall explain the details of the correction they expect.

Awarding in the judgment the obligation to continue to employ the employee

As a result of the amendment of 4th July 2019, only para. 2 of Article 477^{2} of the C.C.P. was changed whereas Article 477^{2} para. 1 of the C.C.P. in force in an unchanged wording still deals with the obligatory issuance of an *ex officio* immediate enforceability clause in some court judgments in labour law cases. By awarding a sum due to the employee, the court will give the judgment *ex officio* the immediate enforceability clause, in the part not exceeding one full monthly remuneration of the employee. This is a special provision in relation to the solutions of Articles 333–338 and has a one-sided subjective dimension, so it applies only in cases initiated by employees (Golat, 2014, p. 6).

In turn, the amendment to Article 477[2] para. 2 of the C.C.P., although very modest, had an impact on the extension of the scope of the court's right to impose on the employer the obligation to continue to employ an employee until the proceedings in the case of the employee reinstatement to work are completed of force of law.

The earlier wording of the provision left no doubt that the scope of its application covered only situations where the employer terminated the employment contract with the employee by notice, and the facts of the case gave rise to the conclusion that the claim has chances to be awarded. This derived from the literal wording of this provision, because the court, at the employee's request, had the right to impose on the employer in its judgment the obligation to continue to employ the employee when the court considered the termination of the employment contract to be ineffective, i.e. in a situation where the judgment had been issued by the end of the period of notice. However, in the case of termination of the employment contract without notice, or else in consequence of the expiration of the period of notice, Article 477[2] para. 2 of the C.C.P. did not apply (Świeboda, 1986).

The material scope of this provision contributed to its restricted application. The court could find the termination of the employment contract to be ineffective, obviously, only in the case of an employee's appeal against the termination of the employment contract and only until the end of the period of notice (Article 45 para. 1 of the Labour Code). After the period of notice expired, the court had no right to declare any longer the employee's dismissal to be ineffective, but it could only reinstate the employee to work or award them a compensation for unjustified or unlawful termination of the employment contract at the amount set out in Article 47[1] of the Labour Code. For this reason, in practice, despite the fact that the factual circumstances of the case suggested it was plausible that the termination of the employment contract would be considered ineffective, judgments imposing on the employer the obligation to continue to employ the employee until the case was completed of force of law were very rare (Gonera, 2020, commentary on Article 477[2], thesis 6). Such a judgment would have to have been issued by the court by the end of the period of notice, i.e. in practice within a period of two weeks to three months, but counted from the date of termination of the employment contract (Article 36 para. 1 of the Labour Code in conjunction with Article 45 para. 1 of the Labour Code), and not from the date the action was initiated (Article 264 of the Labour Code).

There is no doubt that Article 477[2] para. 2 of the C.C.P. in its current wording applies when the employer terminated the employment contract with the employee without notice, then, the court, both when it finds the notice of termination to be ineffective and when it reinstates the employee to work, may, at the employee's request, oblige the employer to continue to employ the employee until the proceedings are completed of force of law. The doubt arises whether this provision also applies when the employer terminated the employment contract with the employee without notice. *Lege non distinguente* it shall be assumed that Article 477[2] para. 2 of the C.C.P. in its current wording allows the court to impose on the employer the obligation to continue to employ the employee until the proceedings are completed of force of law also when the employer terminated the employment contract with the employee without notice (Gonera, 2020, commentary on Article 477[2], thesis 6; May, 2020, p. 1193). This is clearly shown by the literal wording of the provision.

If the legislator's aim was only to correct Article 477[2] para. 2 of the C.C.P. defective in the previous wording and to limit its application to the employee's claims in the case of unjustified termination of the employment contract or that in breach of the legal provisions under Article 45 of the Labour Code, the note thereon is missing in this provision[17]. By changing the scope of Article 477[2] para. 2 of the C.C.P., by adding to its content that the court, ruling on the reinstatement of an employee to work, at the latter's request may impose on the employer the obligation to continue to employ the employee until the proceedings are completed of force of law, the legislator should have provided that a claim for reinstatement is also vested in employees with whom the employer terminated the employment contract without notice (Article 56 of the Labour Code). A change in the objective scope of the given provision will certainly contribute to an increase in its practical application.

When in its judgment, the court imposes on the employer the obligation to continue to employ the employee until the proceedings are completed of force of law, it allows the employee to continue employment under the same working and pay conditions. The solutions from Article 477[2] para. 2 of the C.C.P. are part of the protective function of the labour law, in particular as in Article 47 and 57 of the Labour Code, a lump sum compensation is provided for the period of being not employed due to an employee as a result of reinstatement. A wider scope of application of Article 477[2] para. 2 of the C.C.P. will reduce the employee's damage which they suffer, as a result of termination of the employment contract, by being deprived of the right to earn for a living.

In addition, in para. 2 of Article 477[2] of the C.C.P. two important corrections of a terminological nature were made, namely the term "work place" was replaced in the content of the provision by "employer"[18] and in place of the phrase "until the examination of the case of force of law", a more precise one: "until the completion of the proceedings of force of law" was introduced, thereby laying down the time frame until which the court may impose an obligation on the employer to continue to employ the employee.

Amendments to the provisions of the C.C.P. on the announcement of the judgment, its reasons and the appeal

A noticeable change, also in labour law cases, is the right to adjourn the hearing not only for two weeks, but even although exceptionally for a month, if the case is particularly cumbersome, the material of the case is particularly vast or the court is heavily burdened with other cases (Article 326 para. 1 of the C.C.P.). Undoubtedly, this provision, due to the courts significantly burdened by the number of cases examined, will be often used in practice.

In turn, owing to Article 326 para. 4 of the C.C.P., the judgment need not be announced if the courtroom is empty.

The 4th July, 2019 amendments to the C.C.P. introduced essential changes with reference to the justification of judgments, in terms of the content of the reasons of the judgment (Article 327^1 of the C.C.P.), formal conditions of the request, which shall set out the scope of the statement of reasons requested (Article 328 para. 3 of the C.C.P.) and the time limit to draw up the statement of reasons (Article 329 of the C.C.P.), whose extension, if any, pursuant to Article 329 para. 4 of the C.C.P., may have an impact on extending the deadline for submitting an appeal to three weeks (Article 369 para. 1^1 of the C.C.P.). The request for the statement of reasons which is inadmissible, delayed, unpaid or affected by shortages that have not been made good, although summoned, are rejected by the court, and this closes the way to appeal against the judgement (Article 328 para. 4 of the C.C.P.). As a result of the 4th July 2019 amendment, a request for the statement of reasons, earlier free of charge has been charged with a fixed fee of PLN 100 (Article 25b of the *Act on court costs in civil cases*[19])[20]. Of course, this still does not apply to an employee, initiating an action or submitting a request to initiate non-litigious proceedings, subject to Article 35 subpara. 1 second sentence of the above Act (Article 96 subpara. 1 point 4 of the ACCCC). In cases where the value of the object of the dispute exceeds PLN 50 000, the employee is charged a relative fee on all the writs subject to the fee, i.e. also on the request for the statement of reasons (Article 35 subpara. 1 sentence 2 of the ACCCC).

However, a fundamental change is the fact that an appeal is admissible only if the party has submitted a request for the statement of reasons. The deadline to submit the appeal is calculated from the service on the appellant of the judgment with the statement of reasons (Article 369 of the C.C.P.). Similar solutions were introduced with reference to the manner of calculating the time limit for lodging a complaint (Article 394 para. 2 of the C.C.P.). It shall be emphasized that, *de lege lata*, even decisions issued by the court in closed session shall be justified by the court only if they give the right to appeal, and only at the request of the party, submitted within a week of the date on which the decision was served. The decision with the statement of reasons shall be served only on the party who/which requested the statement of reasons be drawn up and the decision with the statement of reasons be served (Article 357 para. 2^1 of the C.C.P.).

With reference to further, significant changes related to the appeal proceedings in labour law cases, the following shall be specified: details of formal requirements of the appeal in terms of new facts and evidence, as well as allegations as to the actual basis of the judgement (Article 368 para. 1 point 4, para. 1^1–1^3 of the C.C.P.), limiting the formal control of appeal to the court of second instance (Article 373 of the C.C.P. and Article 369 para. 3 and Article 371 of the C.C.P. related to this amendment), significant extension of the scope of examination of the appeal at a closed session at the expense of the hearing (Articles 374–375 of the C.C.P.). The change in Article 386 para. 5 of the C.C.P., according to which in the case of the judgment being set aside and the case being referred back for re-examination, the court of first instance recognizes it in the panel of the same personal composition.

Voices of criticism also appear due to the court's right to dismiss an obviously unfounded action in closed session (Article 191^1 of the C.C.P.). When dismissing the claim, the court issues a judgment which it justifies *ex officio* in writing and serves only on the claimant. The claimant has the right to appeal against this judgment by an appeal to which the legislator introduced several simplifications (Article 391^1 of the C.C.P.). These solutions can be considered as depriving a party of the right to the court (Piaskowska, 2018, p. 29 *et seq.*).

Abuse of procedural law

In the end, it shall be noted that from 7th November, 2019 a clear normative basis, prohibiting any abuse of procedural rights has been introduced to the C.C.P. The abuse of procedural law is not a new issue. The prohibition of procedural law abuse is strongly associated with the right to a fair trial, being encompassed in its very essence (Miszewski, 1933, p. 11; Łazarska, 2012, p. 31 *et seq.* Confer also the resolution of the Supreme Court of 11th December 2013, III CZP 78/13, OSNC 2014/9, item 87). According to the wording of Article 41 of the C.C.P. the parties and participants in the proceedings are not allowed to make use of their right provided for in the proceedings, contrary to the purpose for which it was established. An abuse of procedural law occurs when a party or a participant in proceedings undertakes any procedural act which is provided for by procedural law and is compatible therewith, but due to the particular circumstances and motives for doing so, it is an "unlawful" act (Gudowski, 2019, p. 22 *et seq.*) The recent amendment to the C.C.P. of 4th July 2019, in addition to the normative wording of the prohibition of procedural law abuse, introduced also sanctions for its breaching. They are of a fiscal nature and can be used cumulatively

(Błaszczak, Dziurda, 2020, p. 582 *et seq.*). If the court finds that a party has abused procedural law, it may, among other decisions in the judgment, closing the proceedings in the case, penalize the party to be blamed for the abuse to a fine; regardless of the outcome of the case, make the party to be blamed for the abuse reimburse the expenses to a greater extent than the result of the case would indicate, and even make them reimburse the costs in full; increase the rate of interest awarded from the party whose abuse caused a delay in examining the case, for the time corresponding to this delay (Article 226^2 of the C.C.P.). In labour law cases, Article 41 of the C.C.P. applies directly, while Article 226^2 of the C.C.P. shall be applied accordingly.

Summary

As a result of the 4th July 2019 amendment, the legislator introduced many changes to the provisions of the Code of Civil Proceedings, some of which have a breakthrough significance from the point of view of the law applying, while others have a procedural character. The Amending Law also provides for a number of completely new solutions that have hitherto not been known to Polish civil procedural law.

The 4th July 2019 amendments to the C.C.P. give also the court new tools to combat the parties' acts, which make up an abuse of the right to legal protection given the objectives and functions of the civil process. Currently, when the prohibition of procedural law abuse has its normative justification, the role of the courts has more importance, although they face an obvious difficulty, but also a challenge while assessing whether the party's exercise of its right constitutes an abuse of procedural law.

The purpose of such a comprehensive amendment to the Code of Civil Proceedings, as results from many elements of the justification of the bill, is to speed up and streamline civil proceedings. However, it is important, for the introduced new legal solutions to improve the civil proceedings, but to avoid the prejudice to the procedural rights and guarantees of the parties. It is too early to assess thoroughly how the assumptions are put into life, however, the scholars already draw attention to the unnecessary casuistry of many provisions, which shall not foster the acceleration of proceedings.

New solutions adopted in the C.C.P. will undoubtedly change the shape of the proceedings, but the doubt arises whether all of them were necessary. It seems that for most regulations aimed at speeding up the proceedings, efficient process management based on the appropriate use of existing legal solutions could be sufficient, but preceded by filling vacant judges' positions, supplementing the number of those employed as appropriate auxiliary staff, so as to reduce the number of matters to be dealt with by the judge.

Further numerous changes in the provisions of the C.C.P. are not a desirable phenomenon. The opinions of the representatives of the doctrine shall be approved who suggest the need to start work on a new, modern Code of Civil Proceedings.

Przypisy/Notes

[1] Ustawa z 4 lipca 2019 r. o zmianie ustawy — Kodeks postępowania cywilnego oraz niektórych innych ustaw (4th July 2019 Law on amendments of the Code of Civil Proceedings and of some other laws, Journal of Laws of 2019, item 1469).

[2] Besides, among other laws, such as introduced by the following: of 2.07.2004 (J. of L. of 2004 No 172, item 1804), of 22.12.2004 (J. of L. of 2005 No 13, item 98), of 16.09.2011 (J. of L. of 2011 No 233, item 1381).

[3] Journal of Laws of 2019, item 1043.

[4] The content of the following was changed: Articles 17 para. 4^2, 18 para. 2, 25 para. 1, 31, 34, 38, 44, 45, 47 and 47^1 of C.C.P. and the following was added: Articles 35^1, 37^2, 44^1, and 44^2 of the C.C.P.

[5] Confer p. VII.47 of the justification of the bill — the amendments of the Code of Civil Proceedings and some other laws, The Seym of the Republic of Poland of tenure of office VIII , Seym print No 3137, p. 149.

[6] In consequence of the 2019 amendments, Article 505^{14} para. 1 was changed. It set out which provisions from chapter III, title VII, of the First Book of the Code of Civil Proceedings are not to be applied to simplified proceedings in labour law cases. Currently this refers only to Articles 466, 477 and 477^1 of the C.C.P. Article 467 has not been placed amongst the excluded provisions which means that the solutions related to the liberal approach to formal shortages of court pleadings or less rigorous manners of admitting evidence ex officio are to be applied in this separate procedure.

[7] The concept of obligatory reply to a statement of claims joined with the obligation to be represented by a professional lawyer was considered already in 2011, while working out another amendment of the C.C.P. Eventually it was not approved to be introduced into the 16.09.2011 Law on amendments of the Code of Civil Proceedings and some other laws (Journal of Laws of 2011 No 233, item 1381). Confer the bill of the Law on amendments of the Code of Civil Proceedings and some other laws with drafts of some other executory acts of 14.06.2011 Seym's tenure of office VI, Seym print No 3137; http://orka.sejm.gov.pl/Druki6ka.nsf/ wgdruku/4332; (downloaded: 26.05.2019).

[8] This time limit may be extended at a justified request of the defendant.

[9] The 29th November 1930 law — the Code of Civil Proceedings, unified text J. of L. of 1950 No 43, item 394 as amended.

[10] According to J. Smosarski a simple denial is a groundless denial of the factual basis to the claims (Smosarski, 1934, p. 734).

[11] Thus, according to the justification of the bill — of the Code of Civil Proceedings and some other laws, the Seym of the RP of tenure of office VIII, seym print no 3137, p. 113.

[12] This provision shall not be applied in the labour law cases where an employee is the defendant (Article 477^7 of the C.C.P.), unless they initiate a counterclaim.

[13] Justification of the bill — of the Code of Civil Proceedings and some other laws, the Seym of the RP of tenure of office VIII, seym print no 3137, p. 113.

[14] J. of L. of 2019, item 1043.

[15] Before Article 971 para. 1 of the Labour Code was introduced, the employee's claim for the employment certificate to be issued in consequence of the termination or expiration of the employment relationship could be processed pursuant to general provisions of the Code of civil proceedings on the admissibility of court process in civil cases (Jaśkowski, 1990, s. 9 i n.) in spite of substantial basis lacking. Confer also the opinion by the Biuro Studiów i Analiz Sądu Najwyższego (the Office of Studies and Analyses of the Supreme Court) on the bill of law on amendments to the Labour Code and some other laws presented by the President of the Republic of Poland — Seym print 1653.

[16] 30th December 2016 Regulation by the Minister of Family, Labour and Social Policy on employment certificates, J. of L. of 2018, item 1289.

[17] Pursuant to Article 45 of the Labour Code pursuant to the request by the employee, the court finds the notice of termination inefficient, and in the case the contract has been already terminated — on the employee reinstatement to work on earlier terms or on a compensation.

[18] The wording unified now, owing to changes not only in Article 477^2 para. 2 of the C.C.P. but also in Article 476 para. 1 point 3 and in para. 5 point 1 letter b as well as in Article 477^6 para. 1 of the C.C.P. is in compliance with the amendments introduced in this scope in the Labour Code, in the law on amendments to — the Labour Code and on amendments to some laws (J. of L. No 24, item 110), in force from 2.06.1996.

[19] The 28th July 2005 law on court costs in civil cases (J. of L. of 2019, item 785 unified text), referred to hereinafter as ACCCC.

[20] Article 25b was added by the 4.07.2019 Law (J. of L. of 2019, item 1469), which entered into force on 21.08.2019.

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