

Covid-19 and the Civil Justice in Poland

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In Poland, since 14 March 2020, the Minister of Health has formally declared an epidemic emergency, and since 20 March 2020 - an epidemic. However, this decision wasn't connected with the introduction of any special regulations concerning court proceedings. In practice, it caused a lot of chaos. Most courts formally continued to function, although as a rule, open hearings were cancelled (postponed) and proceedings were held where possible in closed session. At the same time, the doctrine raised the question whether, as a result of the introduction of a state of epidemics, it is possible to speak of a suspension of proceedings by law (*iustitium*) on the basis of Art. 173 Polish Code of Civil Procedure. Most representatives of the doctrine are opposed to this, because it requires a complete interruption of activities by a particular court, and this was not common in the entire judiciary in Poland¹. This meant that deadlines in court proceedings (e. g. to bring an appeals) were continued. This had a negative impact on the legal situation of citizens who were obliged to stay at home. They could not, therefore, in practice, carry out the procedural actions within the prescribed period.

It was not until 31 March 2020 that specific pandemic arrangements for the judiciary were introduced (in the Act called 'anti-crisis shield'). However, these regulations have been limited to interruption of all the time limits in court cases, which were pending on 31 March, until the state of the epidemic ceased. In addition, public hearings in court cases have been expressly prohibited by law, except in the case of strictly listed cases which were considered urgent (e. g. criminal matters relating to imprisonment, family matters, etc.). The president of the court of appeal or the president of the Supreme Court was also entitled to designate a competent court instead of a court which could not act due to the pandemic. However, a clear provision has been introduced stating that all actions taken in courts during an epidemic are effective. This means that the courts should continue to act. These changes provided an argument in favour of the thesis that all proceedings were not suspended by law pursuant to Art. 173 CPC.

The above mentioned solutions are considered insufficient. This is due to the fact that the Polish codes (including the Code of Civil Procedure) lack universal solutions enabling cases to be conducted only by electronic means or only in a closed session. In addition, the suspension of deadlines in all cases has made life very difficult for citizens, for example in non-contentious cases (successions, land register cases), as it makes it impossible to finish these cases. In these cases, on the one hand the courts may render a decision, on the other hand it cannot become final as the time limits for appeals do not start running.

¹ According art. 173 CCP 'proceedings shall be stayed by operation of law when the court ceases its actions due to force majeure'.

For this reason, the Ministry of Justice has prepared in recent days proposals for amendments aimed at: the suspension of deadlines will not apply to certain cases² and that the courts will be able to conduct their hearings more often by videoconferencing and will also be able to hear them in closed session. It will not be necessary for the party or witness to be present in another court, but it will be sufficient for them to be present at home (via Skype, Google Meet, etc.). The same draft provides for the possibility of adjudicating in civil cases in single-member panels (also in appellate proceedings) and allows cases to be designated for judges out of order.

However, the proposed amendments raise doubts as to whether they do not interfere too much with the transparency of the proceedings and the parties' right of access to the file (there are no electronic court records in Poland). In addition, these changes are prepared in a short period of time and their legislative level is not high. Polish civil proceedings are not sufficiently prepared for the sudden electronization of several million court proceedings. There is also a fear that many of these changes will become permanent practice, so that after the state of the epidemic ceases. This is all the more justified because some of the proposed amendments explicitly stipulate that they are also to apply one year after the end of the epidemic.

² The list of these cases is to be announced by the Minister of Justice.