

The Ministry of Justice wants to introduce consumer proceedings. End of the disproportion between consumers and undertakings

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A business undertaking will have to present all relevant assertions and evidence already in the first pleading. / shutterstock

The customer will file a lawsuit against the undertaking with the court competent for the customer's place of residence, and the dispute will follow a special procedure.

The fact that, by definition, the consumer is the weaker party in a legal relationship is best demonstrated by the trials of large service providers, such as banks, insurance companies, energy companies or telecoms, with ordinary people. The disproportion in terms of resources or access to legal knowledge is obvious. What is more, from 2019, a part of disputes between undertakings and consumers – e.g. in cases concerning broadly understood contracts for construction works – will fall under the requirements of commercial proceedings. The latter, as proceedings

intended to resolve conflicts between professional entities, are characterized by stricter formal rules, which may result, for example, in losing a case only because of adducing some circumstances or evidence too late. It is true that a party who is a consumer (as well as an undertaking that is a natural person) may at the beginning of the proceedings request the court pursuant to Article 458[6] of the Code of Civil Procedure to hear the case without regard to the rules of commercial proceedings, but then the dispute will proceed in accordance with the general rules for both parties.

The Ministry of Justice is aware of the need to reduce the disproportion between consumers and undertakings. Therefore, while working on another large package of amendments to the Civil Procedure Code, it proposes to create a new type of separate proceedings – in cases involving consumers. In this model, the party which is a consumer will act according to general rules, but its opponent which is an undertaking will be subject to the same rigours as in commercial proceedings.

Hybrid procedure

This means that the undertaking will have to present all relevant assertions and evidence already in the first pleading, i.e. depending on the situation, either in the statement of claim or in the statement of defence, or otherwise they will be disregarded. Failure of the attorney to appear at the hearing will not be a reason to suspend the proceedings, and deadlines will be more strictly observed.

In addition, the change will concern the territorial jurisdiction of the court. Already today, in cases where the undertaking is the claimant, the competent court to hear the case is that of the consumer's place of residence. In proceedings in consumer cases, all cases, whether the consumer is the defendant or the claimant, will take place in his or her place of residence.

- This is another change prepared by the Ministry of Justice in the spirit of strengthening the position of consumers. However, in the case of the change of provisions regarding territorial jurisdiction, I have the impression that in some cases this will not only level the playing field, but will actually give the consumer an advantage at the expense of the undertaking, says Arkadiusz Pączka, director of the Legislation Monitoring Centre at trade organization representing employers Pracodawcy RP. – Business undertakings are of different sorts and not all of them have as much legal background as it may seem at first glance, adds the expert.

According to Agata Józwiak, a legal advisor at the law firm Wardyński i Wspólnicy, the introduction of separate proceedings in consumer cases is a good step towards increasing consumer protection.

- By their very nature, they are the weaker party in disputes with undertakings. They do not have the same financial resources, legal assistance or experience. It should be remembered, however, that this relationship is not always obvious. For example,

when the undertaking is a natural person running a sole proprietorship. Introducing for such an entity the same procedural rigours as for e.g. a large bank seems too far-reaching and the legislator should see this problem – the legal advisor warns. – This would be in line with the principles applicable in proceedings in commercial cases, where at the request of a natural person who is an undertaking, this procedure does not apply in the case. This is all the more justified because the new procedure would also apply if the undertaking has ceased to conduct business activity, says Agata Józwiak.

Experts are divided

She also admits that the new hybrid procedure may bring many practical problems and it will be necessary to harmonize the provisions well so that there are no discrepancies leading to serious doubts as to which provisions should be applied.

– The recent changes to the Code of Civil Procedure and the applied legislative technique have not always guaranteed consistency and clarity, the expert reminds.

On the other hand, Adam Zwierzyński of Radzikowski, Szubielska i Wspólnicy is a firm opponent of proliferation of new entities in the procedure. – The new proceedings in cases involving consumers are a bad idea. There are already too many separate proceedings in the Code of Civil Procedure. Last year intellectual property proceedings were added. A year earlier commercial proceedings were reinstated. Each successive separateness adds to the procedural chaos, which after the 2019 amendment is already huge, says the advocate. Moreover, he has serious doubts as to whether a procedure that presupposes the inequality of the parties is within the constitutional standard.

– After all, just because someone is a trader does not mean that they are better off in court. I believe that indeed the legislator should ensure special, within reasonable limits, protection for consumers by means of other instruments. For example, as it has done so far, by introducing favourable changes in the provisions on territorial jurisdiction, notes the lawyer.

– In general, however, it would be best to strive to increase the participation of professional attorneys in proceedings, whether by providing more access to legal aid free of charge or by supporting commercial solutions, such as insurance. Professionalization of litigation will meet the same objectives in terms of consumer protection, but at the same time will also give a chance for real acceleration of proceedings, concludes Adam Zwierzyński. ©®

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