A couple of weeks left to ‘park’ claims, or the end of pre-trial conciliation proceedings as we know them

GAZETA PRAWNA
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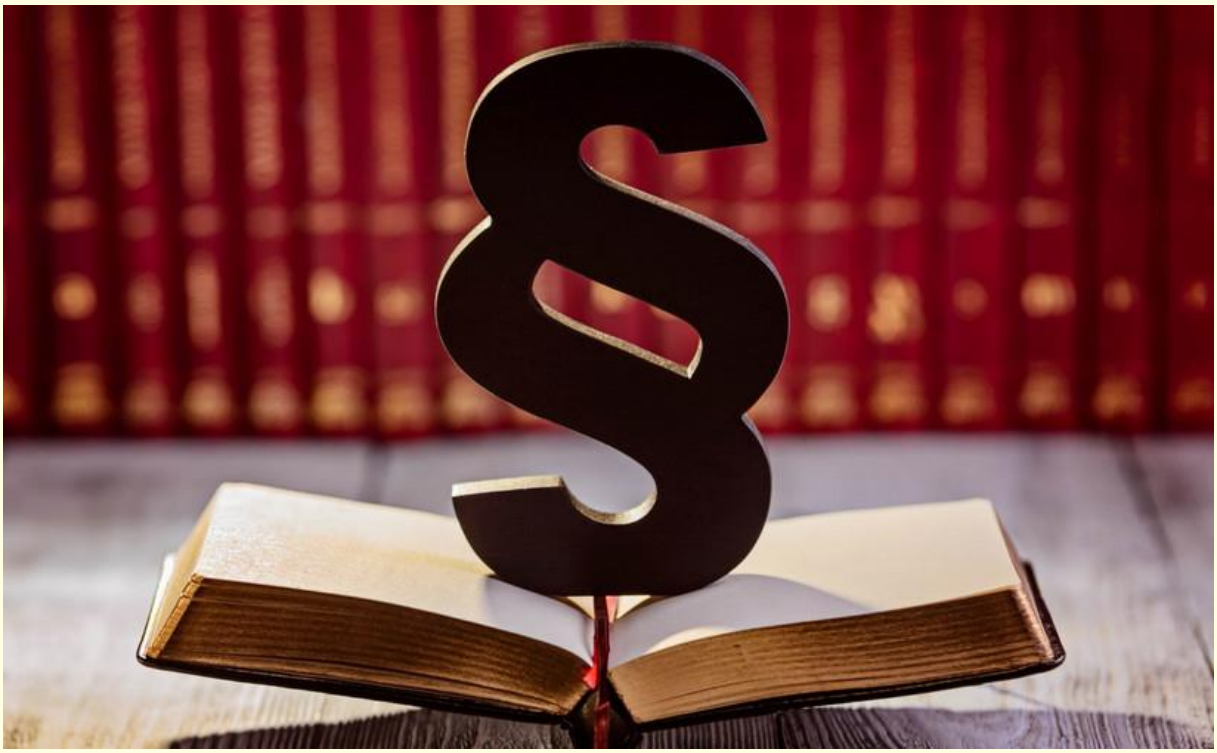

At the end of June, an amendment to the provisions of the Civil Code regarding the statute of limitations will come into force (Journal of Laws 2021, item 2459). The role and importance of conciliation proceedings (Articles 184-186 of the Code of Civil Procedure) will change fundamentally.

This is a simple interlocutory procedure that has been known to our civil procedure since the pre-WWII period. It was conceived as a vehicle allowing the parties to settle a dispute with a court settlement (and thus enforcement order) without opening a full trial.

Although settlements in conciliation cases did occur, summonses to a conciliation hearing served in their vast majority to interrupt the statute of limitations. This effect was not explicitly stipulated in the legislation. So far, the Civil Code has not taken a stance on the conciliation hearing. However, in the jurisprudence of the

courts dating back to the times of the interwar Poland, a view has become established that the summons is an act aimed directly at enforcement of claims, and therefore it interrupts the statute of limitations pursuant to Article 123 § 1 (1) of the Civil Code (the statute of limitations starts to run anew after the conciliation hearing). This view, though it lacks strong theoretical underpinnings, has persisted to this day. Over time, summonses to a conciliation hearing have become a common, inexpensive (for a long time there was a low fixed fee) instrument for 'parking' claims, used to unilaterally extend the time left to sue. The period of limitation could be interrupted many times, thus indefinitely extending the time for bringing an action before the court.

It was not until recent years that the judiciary has learnt lessons from the mass misuse of the summonses to a conciliation hearing. A new concept of assessing the intention of the summoning party has appeared. If the summons only sought to interrupt the statute of limitations (and not to make a settlement too), it could be assumed that, as an abuse of law, the limitation period had not been interrupted. The assessment was to be particularly thorough with regard to repeated summonses to a conciliation hearing, though possible also for the first one. Taking an extreme view (which remained isolated), the Supreme Court held that ostensible summonses should be rejected outright as inadmissible.

However, this raised doubts as to when the summoning party's intention should be assessed (whether already at the stage of conciliation proceedings or not until the trial at a later time). It was not very clear how to assess the intention. General experience shows that the creditor is usually interested in satisfying his claim (to which the settlement may lead) and not only in interrupting the statute of limitations (which will not satisfy the claim). In real life, no one applies for a summons just to interrupt the statute of limitations, although they may do so for that purpose as well. The very concept therefore seemed to be based on a flawed assumption.

The views expressed by the judicature which put into question the effectiveness of the conciliation process were, however, in the minority and the summonses are still today a reasonably safe and inexpensive way (even despite the 2019 increase in the fee to a quarter of that payable for bringing a lawsuit) for a party to protect itself from the statute of limitations.

All this will change on 30 June. The amendment introduces two new points (5 and 6) to Article 121 of the Civil Code. According to the latter, the statute of limitations will not start running, and if it has already started, it will be suspended, with regard to claims covered by an application for a summons to a conciliation hearing – for the duration of the conciliation proceedings.

Instead of an interruption, after which the statute of limitations starts to run anew, there will be suspension, after which the statute of limitations continues to run. Previously the creditor usually gained 3 to 6 years (the most common limitation

periods), after the change he will gain about half a year (this is how long conciliation proceedings usually take).

This is a very good change. Conciliation proceedings will return to the role they should have had from the beginning, namely an instrument that enables the parties to reach a court settlement without the need to open a full trial. The misuse that has lasted for decades will be eliminated.

Civil procedure (like any procedure, or even the law in general) should give its users a fundamental sense of certainty. When performing a procedural act, a party should know whether this act has any effect and what that effect is. When filing an application to get the court issue a summons to a conciliation hearing, the applicant should know whether he has interrupted the running of the statute of limitations. The fact that the current state of affairs did not provide such certainty is clear from the dozens of statements the Supreme Court has made in this regard. The concept of assessing the applicant's intention not only did not solve the problem, but it was itself the source of this uncertainty.

At last we put to an end the systemic flaw of giving the creditor the possibility of unilaterally and repeatedly extending the time limit for bringing a claim.

It is therefore absolutely right that there has been a change to this defective model made by means of a legislative intervention. It is only regrettable that, together with the amendment of Article 121 of the Civil Code, the low fixed fee on the application for a summons to a conciliation hearing was not restored. The reason given for the increase of this fee in 2019 was the desire to curtail the instrumental use of the summonses. Since this problem will be eliminated, the fee should return to its former level. Another thing the legislators should do is introduce into the Court Costs Act an obligation to return the fee if a settlement is reached (similarly to the return of fee in the proceedings regarding examination of civil law cases).

Otherwise, we risk marginalisation of conciliation proceedings, which can have a beneficial role in the civil procedure system and relieve the courts.

Importantly, according to transitional provisions (Article 8 of the amendment), the current provisions apply to conciliation proceedings initiated and not concluded before the amendment enters into force. An application for a summons to a conciliation hearing filed before 30 June, unless it is returned or rejected, will interrupt the running of the statute of limitations under the former rules, regardless of the fact that the conciliation hearing will be held after the amendment enters into force.

This leaves only a couple of weeks to 'park' claims. ©℗

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