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Katarzyna Jurewicz-Bakun<sup>1</sup> Magdalena Taraszkiewicz<sup>2</sup>

# An Implementation of the Constitutional Right to Review the Case Without Unreasonable Delay in Civil Proceedings

**Keywords**: right to court, the right to examine matters without undue delay, civil law, the Constitution

**Słowa kluczowe**: prawo do sądu, prawo do rozpatrzenia spraw bez nieuzasadnionej zwłoki, prawo cywilne, Konstytucja

#### **Abstract**

One aspect of the right to court is the right to have a case resolved within a reasonable time in proceedings that do not involve lengthiness. The purpose of the article is to present the problem related to the implementation of the Art. 45 paragraph 1 of the Constitution in civil procedure. The order to examine the case without undue delay is one of the procedural components of the constitutional right to court. The inability of the court to hear the case within a reasonable period of time weakens the efficiency of the courts and undermines trust in the state and its organs that safeguard compliance with the law. Getting a court trial quickly is in the direct interest of not only the parties to the proceedings but also the public interest. It is up to the court to ensure that procedural guarantees of proceedings are effective as quickly as possible and at the same time responding. The judgment of the European Court of Human Rights of May 16, 2019, unequivocally pointed to the violation by Poland of the right to a fair trial related to the length of court proceed-

ORCID ID: 0000-0001-8565-9450, Ph.D., Faculty of Social Sciences and Humanities, Lomza State University of Applied Sciences, e-mail: kjurewicz@pwsip.edu.pl.

<sup>&</sup>lt;sup>2</sup> ORCID ID: 0000-0003-1297-8279, MA, Faculty of Social Sciences and Humanities, Lomza State University of Applied Sciences, e-mail: mtaraszkiewicz@pwsip.edu.pl.

ings. The amendment to the civil procedure of July 4, 2019 may also not accelerate civil proceedings.

#### Streszczenie

## Realizacja konstytucyjnego prawa do rozpatrzenia sprawy bez nieuzasadnionej zwłoki w postępowaniu cywilnym

Jednym z aspektów prawa do sądu jest prawo do uzyskania rozstrzygnięcia sprawy w rozsądnym terminie, w postępowaniu, w którym nie będzie dochodziło do przewlekłości. Celem artykułu jest przedstawienie problemu związanego z realizacją art. 45 ust 1 Konstytucji w procedurze cywilnej. Nakaz rozpatrzenia sprawy bez nieuzasadnionej zwłoki jest jednym z proceduralnych komponentów konstytucyjnego prawa do sądu. Niemożność rozpoznania sprawy przez sąd w rozsądnym terminie prowadzi do osłabienia efektywności sądów oraz podważa zaufanie do państwa i jego organów, które stoją na straży przestrzegania prawa. Szybkie uzyskanie rozstrzygnięcia sądowego leży w bezpośrednim interesie nie tylko stron postępowania, ale także interesie publicznym. Zapewnienie efektywnego możliwie jak najszybszego i jednoczenie respondującego gwarancje procesowe postępowania należy do sądu. Wyrok Europejskiego Trybunału Trybunale Praw Człowieka z 16 maja 2019 r. jednoznacznie wskazał na naruszenie przez Polskę prawa do rzetelnego procesu związanego z długością prowadzonych postępowań sądowych. Nowelizacja procedury cywilnej z 4 lipca 2019 r. najprawdopodobniej również może nie przyśpieszyć postępowania cywilnego.

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## I. The right to court in constitutional terms

In all democratic states, the citizen's right to judicial protection and the right to access to judicial authorities are constitutionally guaranteed. In the Constitution of the Republic of Poland of April 2, 1997, the right to court was directly expressed in Art. 45 among the regulations defining the legal situation of an individual in the state and society and in Art. 77 par. 2<sup>3</sup>. The right to court is the right of the individual to a fair and public hearing of the case

<sup>&</sup>lt;sup>3</sup> The Constitution of the Republic of Poland of April 2, 1997 (Dz.U.No. 78, item 483, as amended).

by the court<sup>4</sup>. According to the Art. 45 par. 1 of the Constitution of the Republic of Poland "everyone has the right to a fair and public hearing of the case without undue delay by a competent, impartial and independent court". As A. Kubiak rightly notes, "[...] the concept of "everyone" includes every human individual, regardless of his nationality. Therefore, everyone is the subject of the constitutional right to court – both a Polish citizen and a foreigner, as well as a stateless person<sup>5</sup>". Therefore, the right to court is vested in both natural persons and righteous persons as well as organizational units without legal personality, to whom the law confers legal capacity. The exception is entities operating as public authorities because, as noted by the Constitutional Tribunal in its judgment of June 9, 1998, "[...] the right to court cannot be discussed, inter alia, as regards internal disputes of the state apparatus". Place of Art. 45 in the system of the Constitution indicates the autonomous nature of the right to a court. It is not only an instrument enabling the exercise of other constitutional rights and freedoms, but it is self-existent and is protected regardless of the violation of other subjective rights<sup>7</sup>.

The principle of access to court contained in the Art. 45 of the Constitution of the Republic of Poland gives: "the opportunity to address in every situation (case) to the court with a request to determine the legal status of an individual, in situations not only to challenge or violate her rights and freedoms, but also in situations of uncertainty she feels, uncertainty, especially both occurrences of such a violation. Lack of detailing in a commented article, situations in which an individual may involve a court in his case, of course, means that

<sup>&</sup>lt;sup>4</sup> P. Tuleja, Konstytucyjne gwarancje praw jednostki, [in:] Prawo konstytucyjne RP, ed. P. Sarnecki, Warsaw 2005, p. 171.

A. Kubiak, Konstytucyjna zasada prawa do sądu w świetle orzecznictwa Trybunału Konstytucyjnego, Łódź 2006, p. 145; A. Chmielarz-Grochal, Bezpośrednie stosowanie art. 45 ust. 1 Konstytucji Rzeczypospolitej Polskiej, "Przegląd Prawa Konstytucyjnego" Konstytucyjne prawo do sądu w teorii i praktyce, ed. M. Kłopcka-Jasińska, 2016, No. 3(31), p. 73; G. Zalizowski, Prawo do sądu na tle Konstytucji Rzeczypospolitej Polskiej w kontekście europejskiej Konwencji o ochronie praw człowieka i podstawowych wolności, http://www.repozytorium.uni.wroc.pl/Content/79173/01\_G\_Zalizowski\_Prawo\_do\_sadu\_na\_tle\_Konstytucji\_Rzeczypospolitej Polskiej.pdf (20.05.2019).

 $<sup>^6</sup>$  Judgement of the Constitutional Tribunal of June 9, 1998 (K28/97, LEX No. 33151), Decision of the Constitutional Tribunal of May 22, 2007 (SK 70/05, LEX No. 272793).

 $<sup>^7\,</sup>$  Judgement of the Constitutional Tribunal of July 10, 2000 (SK 12/99, OTK ZU 5/2000/143, LEX No. 41215).

he is allowed to engage in any situation, according to his free assessment". Moreover: "in a state, which follows the rule of law, the right to court cannot be understood only formally as the availability of a judicial process in general, but also materially as the possibility of legally effective protection of rights in court. Although there are no grounds for the ordinary legislator to completely deny the choice of common or specific courts in shaping the judicial path, it is always necessary for the judicial protection to have a real character. This real character means, among others the right of the right holders to seek protection of their interests in court equipped with the power to hear the case with effect to ensure that their claims are realized"9.

In the theory of constitutional law and the well-established jurisprudence of the Constitutional Tribunal, it follows that the right to court includes in particular:

- the right of access to court, i.e. the right to run proceedings in court;
- the right to suitably shaped and reliable court proceedings, in accordance with the requirements of fairness and publicity;
- the right to obtain a binding settlement of the case by the court within a reasonable time;
- the right to appropriate shaped system and position of the authorities that recognize cases<sup>10</sup>.

One of the basic premises for the existence of the right to court as such is to provide the individual with protection against arbitrariness of power<sup>11</sup>.

<sup>&</sup>lt;sup>8</sup> Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczpospolitej Polskiej,* "Państwo i Prawo" 1997, No. 11–12, p. 89; P. Sarnecki, *Komentarz do art.* 45, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, Warsaw 2003, pp. 1–2.

<sup>&</sup>lt;sup>9</sup> Decision of the Constitutional Tribunal of January 25, 1995 (W 14/94, OTK ZU 1995, item 19, LEX No. 25547).

<sup>&</sup>lt;sup>10</sup> Judgements of the Constitutional Tribunal of: March 14, 2006 (SK 4/05, OTK ZU No. 3/A/2006, item 29, LEX No. 182492); September 19, 2007 (SK 4/06, OTK ZU No. 8/A/2007, item 98, LEX No. 316049); March 31, 2009 (SK 19/08, OTK ZU No. 3/A/2009, item 29) and January 13, 2015 (LEX No. 487553, SK 34/12, OTK ZU No. 1/A/2015, item 1, LEX No. 1650353).

A. Krzywonos, J. Gołaczyński, *Prawo do sądu*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warsaw 2002, p. 725; Judgement of the Cinstitutional Tribunal of Maj 12, 2003 (SK 38/02, LEX No. 79777).

The already mentioned Art. 77 par. 2 of the Constitution of the Republic of Poland is considered by the Polish judiciary as supplementing and developing the Art. 45 par. 1 of the Constitution of the Republic of Poland, for lex specialis toward him<sup>12</sup>. Court guarantees for the investigation of infringed rights and freedoms resulting from the content of the Art. 77 par. 2 of the Constitution of the Republic of Poland constitutes the basic means of protection of constitutionally guaranteed freedoms and rights. This means that the guarantee does not generally recognize any exceptions in the provisions of generally applicable law. The Constitution prohibits the legislator from introducing legal acts, which close the court path to the investigation of the essence of the infringed freedoms and rights<sup>13</sup>. In addition, as P. Sarnecki stated, this guarantee cannot be limited in the event of extraordinary, martial or exceptional states<sup>14</sup>. It should be noted, however, that this guarantee has no absolute character, because, as the Constitutional Tribunal points out: "there is no absolute legal system in any legal system that would not be subject to any restrictions and which would consequently give the right holder unlimited protection of their rights in court"15. Moreover, according to the Constitutional Tribunal: "the basic law introduces the presumption of court proceedings. This does not mean, however, that any restrictions on the judicial protection of the interests of an individual are unacceptable. Limitation of the right to court provides expressly the Art. 81 of the Constitution". However, limitations may also result from the other provisions of the Constitution. In particularly exceptional circumstances, there may be a collision of the right to court with another constitutional norm that subjects value to protection of equal or even greater importance to the functioning of the state or the development of the individual. The necessity of considering both constitutional norms may support the introduction of certain restric-

Judgement of the Constitutional Tribunal of May 10, 2000 (K 21/99, LEX No. 40330), Decision of the Supreme Administrative Court (7) of January 10, 2011 (I OPS 4/10, LEX No. 672627).

<sup>&</sup>lt;sup>13</sup> A. Młynarska-Sobaczewska, *Prawo do sądu (art. 41, 45, 77, 176, 177, 178)*, [in:] *Konstytucja Rzeczpospolitej Polskiej. Komentarz encyklopedyczny*, eds. W. Skrzydło, S. Grabowska, R. Grabowski, Warsaw 2009, p. 404.

<sup>&</sup>lt;sup>14</sup> P. Sarnecki, Komentarz do art. 45 Konstytucji RP, [in:] Konstytucja Rzeczpospolitej Polskiej, Komentarz. Tom II, eds. L. Garlicki, M. Zubik, Warsaw 2016, p. 237.

<sup>&</sup>lt;sup>15</sup> Judgement of the Constitutional Tribunal of May 10, 2000 (K 21/99, OTK 2000/4/109, LEX No. 40330).

tions on the scope of the subject right to court. Such restrictions are permissible to the absolutely necessary extent if the realization of a given constitutional value is not possible otherwise. They must meet the conditions specified in the Article 31 section 3 of the Constitution. They can be established only by statute and only when they are necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morality, or the freedoms and rights of others. They must not violate the essence of those freedoms and rights that limit<sup>16</sup>. Similarly, the Constitutional Tribunal in the judgment of May 10, 2000 cited above, states that there is no absolute and absolute right to court, which would not be subject to any restrictions and which, as a consequence, would give the right holder an unlimited possibility to protect his rights in court<sup>17</sup>. Limiting the right to court may be necessary due to other values widely respected in the rule of law, in particular legal security, the principle of legalism or trust in the law. In addition, the very shape of the proceedings before the court creates some limitations. These restrictions include, among others: procedural and material time limits, fees, rules of initiating proceedings, rigors of evidence<sup>18</sup>.

## II. Review of the case without unreasonable delay in the light of the case-law

The basic meaning of a "reasonable time for considering the case", "without unreasonable delay" for the justice system is well illustrated by the sentence: "Justice delayed, is justice denied" (*fr. Justice retive, justice fautive*) – Non-responsive justice is a denial of justice<sup>19</sup>.

 $<sup>^{16}</sup>$  Judgement of the Constitutional Tribunal of June 9,1998 (K 28/97, OTK ZU 4/1998, item 50, LEX No. 33151).

<sup>&</sup>lt;sup>17</sup> J. Juchniewicz, O granicach swobody ustawodawcy w kształtowaniu standardów prawa do sądu, "Przegląd Prawa Konstytucyjnego" Konstytucyjne prawo do sądu w teorii i praktyce, ed. M. Kłopcka-Jasińska, 2016, No. 3(31), p. 34; R. Trzaskowski, Czy istnieje możliwość ograniczenia drogi sądowej w dochodzeniu wolności lub praw? Uwagi na marginesie art. 77 ust. 2 Konstytucji, "Przegląd Prawa Konstytucyjnego" 2013, No. 2(14), p. 85.

<sup>&</sup>lt;sup>18</sup> K. Giedroń, *Prawo do sądu w orzecznictwie Trybunału Konstytucyjnego i orzecznictwie sądowym*, http://www.repozytorium.uni.wroc.pl/Content/66155/38\_Konrad\_Gieron.pdf (20.05.2019).

<sup>&</sup>lt;sup>19</sup> A. Redelbach, *Sądy a ochrona praw człowieka*, Toruń 1999, p. 279.

Introduction of the institution of the appeal to the Polish legal order, as emphasized in the doctrine<sup>20</sup>, is combined with the implementation of the judgment of the European Court of Human Rights (hereinafter: ECtHR) of October 26, 2000 in case *Kudła v. Poland*<sup>21</sup>, in which the Court *expressis verbis* indicated the need to provide an effective remedy to appeal to the national authorities in the event of a breach guaranteed by the Article 6 of the European Convention on Human Rights (hereinafter: ECHR), the right to hear the case in court proceedings within reasonable time<sup>22</sup>. Finding a violation of the Article 13 of the ECHR<sup>23</sup>, the ECtHR ruled that there is no effective remedy to appeal in the Polish legal system with regard to the excessive length of court proceedings, because the one available in the domestic procedure does not guarantee either compensation for harm caused by excessive length or guarantee of acceleration of proceedings.

Such a task under national law is fulfilled by the Act of June 17, 2004 on a complaint of a violation of a party's right to hear a case in preparatory proceedings conducted or supervised by a prosecutor without judicial delay<sup>24</sup> (hereinafter: the Complaint Act). In the Article 2 of the Complaint Act, parties of legal proceedings are granted right to bring a complaint on the violation of the

L. Garlicki, Implementacja orzecznictwa Europejskiego Trybunału Praw Człowieka w ustawodawstwie krajowym (problemy przewlekłości postępowania), "Biuro Informacji Rady Europy. Biuletyn" 2002, No. 1, p. 7.

Judgement of the ECtHR of October 26, 2000 r. in the case of *Kudła v. Poland* (complaint No. 30210/96, LEX No. 42804).

Article 6 par. 1, first sentence: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". The Convention for the Protection of Human Rights and Fundamental Freedoms drafted on November 4, 1950 amended with protocols No. 3, 5, 8 and 2 (Dz.U. 1993, No. 61, item 284).

Article 13 provides the right for an effective remedy before national authorities for violations of rights under the Convention. The inability to obtain a remedy before a national court for an infringement of a Convention right is thus a free-standing and separately actionable infringement of the Convention.

<sup>&</sup>lt;sup>24</sup> Dz.U. 2018, item 75.

right to hear the case without undue delay, if the proceedings leading to the final decision last longer than necessary to clarify important factual and legal circumstances, or longer than necessary to settle an enforcement or other case regarding the enforcement of a court order (excessive length of proceedings). In justification of the decision of April 15, 2015 the Supreme Court noted that in the light of the Complaint Act, an unjustified delay leading to the excessive length of proceedings is the situation in which the court, by committing delinquency or taking incorrect actions, does not decide on the essence of the case in the proper, appropriate time. In other words, when there was an unjustified delay in substantive examination of the case due to the court's fault<sup>25</sup>. In the Article 2 par. 2 of the Complaint Act it is assumed that in order to determine whether the case was excessive, the timeliness and correctness of actions taken by the court should be assessed to issue a decision on the substance or actions taken by the prosecutor conducting or supervising the investigation in the case to complete the preparatory proceedings or actions taken by the court or court bailiff in order to conduct and terminate the debt collection or any other enforcement case, taking into account the nature of the case, the factual and legal complexity of the case, the importance of the issues resolved to the party who brought the complaint and the behavior of the parties, and in particular the party who alleged the excessive length of proceedings.

It should be noted that the Complaint Act does not explicitly specify what period of waiting for a case should be considered as an unreasonable delay<sup>26</sup>. A hint results from the Article 14 of the Act, which provides that the re-complaint of excessive length proceedings in the same case may be brought after 12 months. This means that the legislator considered as excessive proceedings ones that last longer than 12 months. However, if the proceedings last longer than 12 months, it does not mean that the excessive length of proceedings takes place. This statement prevails in the case law of the Supreme Court, which claims that there is the excessive length of proceedings in the case of inactivity of the court consisting of not awarding a hearing, including appeal, which lasts at least 12 months unless there are circumstances justifying the delay<sup>27</sup>.

Decision of the Supreme Court of April 15, 2015 (IV CSP 1/15, LEX No. 2436553).

Decision of the Supreme Court of June 22, 2016 (III CSP 1/16, LEX No. 2099033).

Decision of the Supreme Court of May 12, 2005 (III SPP 96/05, OSNP 2005 No. 23, item 384); Decision of the Supreme Court of March 13, 2006 (III SPP 10/06, OSNP 2007

A similar position was adopted also by the Supreme Administrative Court, recognizing that there is an excessive length of proceedings if waiting time for appointing a trial in the administrative court case significantly exceeds 12 months<sup>28</sup>. Czesław Paweł Kłak disagrees with this statement and believes that the Article 14 of the Complaint Act "cannot be a "guideline" in any way for the assessment of whether the proceedings have been excessive or not [...] thus, the legislator cannot introduce such a "temporary" criterion<sup>29</sup>. In result, it should be assumed that the Polish legislator did not accept that excessive length of proceedings are the ones which last longer than 12 months"30. It should be noted, however, that the Supreme Court does not claim that the violation of the party's right to hear the case without unreasonable delay is considered as an annual inactivity of the court and, moreover, it is an absolute premise or rigid time rule for assessing the compliance of proceedings with conventional, constitutional and procedural directives to adjudicate in the case within reasonable time. Indeed, it cannot be excluded that there is an excessive length of proceedings for a shorter period, but this requires special consideration and assessment of the "weight of the case", the importance of the case to the applicant well as the consequences that may result from the excessive length of proceedings<sup>31</sup>.

In addition, in the ECtHR case law, there are no rigid time limits for court proceedings, the exceeding of which could be automatically considered as a violation of the right to hear the case within a "reasonable time"<sup>32</sup>. In the light of the case law of the ECtHR, four indications of the excessive length of proceedings can be distinguished<sup>33</sup>:

No. 7–8, item 120); Decision of the Supreme Court of March 21, 2006 (III SPP 13/06, OSNP 2007 No. 7–8, item 121); Decision of the Supreme Court of March 14, 2007 (III SPP 3/07, LEX No. 979621).

Decision of the Supreme Administrative Court of February 28, 2005 (I OPP 44/05, LEX No. 849542); Decision of the Supreme Administrative Court of March 4, 2005 (I OPP 12/05, LEX No. 849540).

<sup>&</sup>lt;sup>29</sup> Cz.P. Kłak, *Pojęcie przewlekłości postepowania sądowego*, "Prokuratura i Prawo" 2008, No. 12, p. 72.

<sup>&</sup>lt;sup>30</sup> Decision of the Supreme Court of April 24, 2014 (III SPP 56/14, LEX No. 2008689).

<sup>&</sup>lt;sup>31</sup> Decision of the Supreme Court of May 12, 2016 (III SPP 52/16, LEX No. 2051480).

 $<sup>^{\</sup>rm 32}~$  K. Gonera, Przewlekłość postępowania w sprawach cywilnych, "Przegląd Sądowy" 2005, No. 11–12, p. 3.

<sup>&</sup>lt;sup>33</sup> M.A. Nowicki, Europejski Trybunał Praw Człowieka – orzecznictwo, Tom I – Prawo do rzetelnego procesu sądowego, Cracov 2001, p. 46.

- punctuality and correctness of actions taken by the court in order to issue an adjudication on the substance,
- the nature of the case, the factual and legal degree of its complexity,
- the importance of the issues resolved in the party that brought the complaint,
- behavior of the parties, and in particular of the party who alleges excessive length of proceedings.

There is no doubt that the right to decide a case by a court without unreasonable delay is an important element of the constitutional right to court and the effectiveness of this right is closely related to the lack of excessive length of time during the proceedings. It should be noted that parties and participants in court proceedings cannot be held liable for excessive length of proceedings resulting from the faulty functioning judicial authorities. The inability of the court to hear the case within a reasonable time leads to a weakening of the efficiency of the courts and undermines the trust in the state and its bodies that uphold the observance of the law<sup>34</sup>. It is not only in the interest of the parties to the proceedings but also in the public interest that a court decision is quickly obtained<sup>35</sup>.

## III. The principle of concentration of process material and speed in civil proceedings

The efficiency of legal protection is not only about issuing correct judgments, but also about adjudicating as soon as possible. According to the Article 6 of the ECHR: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established

M. Taraszkiewicz, C.P. Waldziński, *Zasada szybkości i efektywności postępowania cywilnego a nadużycie praw procesowych w zaskarżaniu orzeczeń*, "Zeszyty Naukowe Instytutu Administracji Akademii im. Jana Długosza w Częstochowie. Gubernaculum et Administratio" 2017, No. 2(16), p. 74.

Judgement of the Consitutional Tribunal of October 18, 2011 (SK 39/09, OTK-A 2011/8); Ł. Kurnicki, *Strukturalne przyczyny przewlekłości postępowań sądowych na przykładzie spraw cywilnych*, "Krajowa Rada Sądownictwa Kwartalnik" 2016, No. 1, pp. 13–23.

by law"<sup>36</sup>. Under this provision, the ECtHR settles numerous cases for compensation for damages suffered by the party in civil proceedings<sup>37</sup>. It should be noted, however, that the Constitutional Tribunal emphasizes that the scope of matters resulting from the interpretation of the Article 45 par. 1 of the Constitution of the Republic of Poland should be considered in the broad meaning in contrast to the aforementioned Article 6 par. 1 of the ECHR, which is limited to civil and criminal matters. Such an interpretation of the Constitutional Tribunal is aimed at preventing the exclusion from the jurisdiction of the court of matters other than in the field of civil and criminal law<sup>38</sup>.

Introduced by the amendment of September 16, 2011<sup>39</sup> a change of the content of the Article 6 of the Code of Civil Proceedings (hereinafter: CCP) transformed the model of presenting the evidence in the civil procedure by replacing the formula of statutory evidence preclusion (phasing out the possibility of invoking new facts and evidence in further stages of procedure) with the institution of recognition of the judge. This means that the legislator equipped the presiding judge and the court with appropriate measures to concentrate the evidence through the possibility of the chairman issuing orders before the hearing to prepare, for example, the order to submit a response to the statement of claim (Article 207 par. 1–3 CCP<sup>40</sup>).

The principle of concentration of procedural material in the Polish civil proceedings regulated in the Article 6 of CCP, is one of the basic principles of civil procedure. Its purpose is to counteract the prolongation of the proceedings and strive for the settlement to take place at the first meeting without prejudice to the actual and legal clarification of the case. According to P. Grzegorczyk and K. Weitz, the longer the proceedings last, the lower the value of the result achieved <sup>41</sup>. Pro-

Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (Dz.U. 1993, No. 61, item 284.) – hereinafter: ECHR.

<sup>&</sup>lt;sup>37</sup> Affaire Monet v. France – 35/1992/380/454, Affaire Silba Pontes v. Portugal 6/1993/401/479.

P. Grzegorczyk, K. Weitz, Komentarz do art. 45 Konstytucji RP, [in:] Konstytucja RP tom I Komentarz art. 1–86, eds. M. Safjan, L. Bosek, Warsaw 2016, p. 1106.

<sup>&</sup>lt;sup>39</sup> The act of September 16, 2011 on the amendment of the Code of Civil Proceedings and other legal acts (Dz.U. 2011, No. 233, item 1381).

<sup>&</sup>lt;sup>40</sup> The act of November 17, 1964 – Code of Civil Proceedings (Dz.U. 2018, item 1360) – hereinafter: CCP.

<sup>&</sup>lt;sup>41</sup> P. Grzegorczyk, K. Weitz, Komentarz do art. 6 k.p.c., [in:] Kodeks postępowania cywilnego. Komentarz. Tom I. Postępowanie rozpoznawcze, ed. T. Ereciński, Warsaw 2006, LEX No. 587584166.

longed litigation may also significantly jeopardize the correctness of issued judgments, because some evidence may cease to be available or their value will decrease after a long time.

It should be emphasized, therefore, that the principle of speed of conduct is not superior to the pursuit of correct judgement and establishing the truth<sup>42</sup>. The link between the speed of conduct and the need to properly hear the case must consider that the purpose of the civil trial is not to replace the parties by the court in clarifying the case, but to provide the parties with procedural guarantees. Therefore, the institution of the court's omission of claims or proof on the basis of the Article 217 par. 2, Article 493 par. 1 or Article 503 par. 1 of CPP does not constitute a violation of the Article 6 of CCP<sup>43</sup>. According to the judgement of the Appeal Court in Krakow of September 27, 2017, reference number I ACa 492/17 "It is true that on the basis of the provision of the Article 217 par. 1 of CCP the party is entitled to submit requests for evidence up to the end of the hearing at first instance, nevertheless the Article 217 par. 2 of CPP significantly limits the right to request evidence in appropriate time by ordering the court to omit any belated evidence, unless the party makes it probable that it did not report them in appropriate time without any fault or that taking into account the delayed evidence would not delay the case or that there are other exceptional circumstances. It is connected with the obligations imposed on parties by the Article 6 par. 2 of CCP to cite all the facts and evidence without delay. Clarification of the sanctions provided in the Article 217 par. 2 of CCP is the Article 207 par. 6 of CCP related to procedural documents. Characteristically, both of these provisions do not leave the issue of omitting belated evidence for any court's discretion, but require such omission, unless circumstances in these provisions are clearly indicated. Therefore, it is only the determination of whether or not such a circumstance is made to assess the court, and a negative determination in this matter results in the omission of belated evidence"44.

<sup>&</sup>lt;sup>42</sup> M. Manowska, *Komentarz do art. 6 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. M. Manowska, Warsaw 2013, p. 40.

<sup>&</sup>lt;sup>43</sup> Ibidem, p. 40.

 $<sup>^{44}\,\,</sup>$  Judgement of the Court of Appeal in Krakow of September 27, 2017 (I ACa 492/17, LEX No. 2442766).

The Article 6 of CCP points out that it is not only the court that has the responsibility to concentrate the process material and to prevent the proceedings from being delayed. It also applies to parties who are obliged to promptly indicate not only the facts but also evidence. It is the duty of the plaintiff to cite the facts from which the claim originates and to indicate the evidence confirming the validity of the claim. Under this obligation, however, the plaintiff cannot be obliged to predict all possible variants of the case, including the submission of evidence that may hypothetically be challenged by the defendant, or to report evidence where the defendant generally only denies all circumstances on which the party claimant deduces his claim<sup>45</sup>.

In summary, the concentration of process material and the postulate of speed of conduct cannot be at the expense of objective truth<sup>46</sup>. The postulate and the order to counteract the delay in proceedings cannot be treated in an abstract way. It is the court's duty to respect the procedural guarantees of persons participating in the proceedings and to fully explain the merits of the case both in factual and legal.

## IV. Prohibition of the procedural rights abuse in Polish civil proceedings

One of the basic constitutional principles relating to court proceedings is discussed in this study as the principle of fair conduct regulated in the Article 45 par. 1 of the Constitution of the Republic of Poland and the principle of a democratic state that follows the rule of law regulated in the Article 2 of the Constitution of the Republic of Poland. It follows from these rules that the court's obligation to perform all activities in accordance with the law; while the principle of a fair trial also obliges the parties and other participants of the proceedings not to abuse procedural rights<sup>47</sup>. Prohibition of abuse of procedural rights allows, therefore, preventing the use of the law in a way that is

 $<sup>^{45}</sup>$  Judgement of the Court of Appeal in Warsaw of April 7, 2017 (VI ACa 1902/15, LEX No. 2436627).

<sup>&</sup>lt;sup>46</sup> J. Bodio, Komentarz do art. 6 k.p.c., [in:] Kodeks postępowania cywilnego. Komentarz aktualizowany. Tom I. Art. 1–729, ed. A. Jakubecki, Warsaw 2018, LEX No. 587290100.

<sup>47</sup> M.G. Plebanek, Nadużycie praw procesowych w postępowaniu cywilnym, Warsaw 2012, p. 57.

contrary to the function of the provisions and may be relevant to the interpretation and application of the law by the court<sup>48</sup>.

The Polish civil procedure does not explicitly define the prohibition of abuse of procedural rights. However, indirectly to this prohibition refer in particular the following provisions: Article 3, Article 103 par. 1–2, Article 120 par. 4, Article 155 par. 2, Article 207 par. 6, Article 217 par. 2–3, Article 252 and Article 253 in conjunction with the Article 255 of CCP.

The principle of performing procedural actions in accordance with material truth and good manners49 is addressed only to the parties as an indication that the burden of giving explanations as to the circumstances of the case and the appointment of evidence, as a rule, rests with the parties. The clause of good manners contained in the mentioned provision implies that the parties should be obliged to diligently use their powers and, therefore, not abuse them. The parties' taking actions in a manner that is contrary to their purpose and function is an act contrary to good morals<sup>50</sup>. The obligation resulting from the Article 3 of CCP was specified by the legislator in the Article 232 of CCP (in a first sentence). Therefore, the court's task is not to force parties to submit explanations and evidence<sup>51</sup>. Provided in the Article 232 of CCP (second sentence) the court's ability to take evidence not indicated by the parties is a right, not a duty<sup>52</sup> and, in the opinion of M. Sieńko, is a discretionary act taken by a court ex officio53. Those actions taken by a court to the extent specified in the Article 232 of CCP should only be of an auxiliary nature, so they can only be taken if other actions aimed at stimulating the parties do not bring results.

 $<sup>^{48}</sup>$  Decision of the Supreme Court of July 21, 2015 (UZ 3/15, available at: www.saos.org. pl/judgments/243061, 19.05.2019).

<sup>&</sup>lt;sup>49</sup> Article 3, CCP.

Decision of the Supreme Court of June 16, 2016 (V CSK 649/15, LEX No. 2072198).

Judgement of the Supreme Court of December 11, 1998 (II CKN 104/98, LEX No. 394340), Judgement of the Supreme Court of July 17, 2009 (IV CSK 117/09, LEX No. 2096949); Judgement of the Supreme Court of November 7, 2007 (II CSK 193/07, LEX No. 2423339).

 $<sup>^{52}</sup>$  Resolution of the Supreme Court of May 19, 2000 (III CZP 4/00, OSNC 2000, No. 11, item 195, LEX No. 344800).

<sup>&</sup>lt;sup>53</sup> M. Sieńko, Komentarz do art. 232 k.p.c., [in:] Kodeks postępowania cywilnego. Komentarz, ed. M. Manowska, Warsaw 2013, p. 450.

However, the obligation to perform procedural actions in accordance with good practices is not independent and does not give the chairman an effective instrument of influencing the parties in the process of gathering evidence. Violation of the burden of carrying out procedural acts in accordance with good morals may be considered when applying specific regulations relating to the concentration of evidence in civil proceedings<sup>54</sup>. This applies to the Article 207 par. 6, Article 217 par. 2–3, Article 344 par. 2, Art. 493 par. 1 and Art. 503 par. 1 of CCP. Consequences of measurable violation of the obligation resulting from the Art. 3 of CCP will consider the behavior of the party when deciding about the costs of the process<sup>55</sup>, as well as the possibility of finding the party who, by requesting the appointment of an official from the office, provided false information<sup>56</sup>.

The next provision referring to the prohibition of violation of procedural rights is the Article 155 par. 2 of CCP. According to its content, the chairman of the adjudication panel has the option of taking the floor when the speaker abuses it and repeal the question if it is inappropriate or superfluous. Questions that are inappropriate or superfluous should be questions that go beyond the subject of the case, suggesting the content of the answer or derogating from good manners. In case of violating the seriousness, calmness or order of court actions, the chairman may also apply the so-called punishment orders, which include: a fine of up to PLN 3,000 and imprisonment of up to 14 days<sup>57</sup>. In addition, the chairman may also admonish a person whose behavior he considers to be inappropriate, and after an ineffective reminder, expel her from the courtroom<sup>58</sup>.

The legislator also introduced the so-called procedural preclusion in the Article 207 par. 6 and Article 217 par. 2–3 of CCP, the aim of which is to avoid the excessive length of civil proceedings. In principle, the parties may, up to the end of the hearing, add new facts and submit evidence. The justification of the draft amendment to the Code of Civil Procedure

<sup>&</sup>lt;sup>54</sup> M. Manowska, Komentarz do art. 6 k.p.c., [in:] Kodeks postępowania cywilnego..., p. 39.

Article 103 par. 2, CCP.

<sup>&</sup>lt;sup>56</sup> Article 120 par. 4, CCP.

Article 49 of the act of July 27, 2001 – The Law on the System of Common Courts (Dz.U. 2019, item 52) – hereinafter: LSCC.

<sup>&</sup>lt;sup>58</sup> Article 48, LSCC.

of 16 September 2011 shows that the court's assessment of whether a party made theorems or evidence in appropriate time should be conditional on whether the party could, and due to the natural course of the process, invoke claims or evidence in advance due to its connection with the material previously presented. According to the case law, the court on the basis of the Article 217 par. 3 of CCP may disregard the requests for proof or withdraw from the admission of admissible evidence if the circumstances of the case have already been sufficiently clarified, i.e. when it comes to evidence of circumstances which have already been explained in accordance with the applicant's claim<sup>59</sup>. The court will not take into consideration evidences, if the evidence under the Act is inadmissible<sup>60</sup>, unenforceable or unusable for finding a thesis or was only proposed in order to prolong the proceedings. It should be emphasized, however, that the refusal to carry out the evidence does not deprive the party of the possibility to defend its rights<sup>61</sup>, but it may constitute a procedural error having a significant impact on the outcome of the case<sup>62</sup>.

To sum up, the principle of prohibiting the abuse of procedural rights in civil proceedings does not apply only to the parties, but also to their representatives. However, the application of sanctions by the court cannot be made hastily, because it can destroy the guarantee of the parties to a fair trial. The judge conducting the trial and exercising the managerial powers should not deprive the parties of their procedural rights. As an inappropriate and defective one should evaluate the practice limiting the statements of the parties, as well as not admitting evidence of significant importance to the case. It often happens that a judge dismisses requests for evidence as belated, even though they were reported in a statement of claim or a statement of defense and maintained throughout the course of the proceedings. It is the duty of the judge to clarify the substance of the case and issue a judgment on the basis of legal provisions and evidence.

Judgement of the Supreme Court of October 15, 1999 (I PKN 316/99, OSNP 2001, No. 5, item 151); Judgement of the Supreme Court of September 26, 1966 (II CR 314/66, OSNC 1967, No. 2, item 39).

<sup>&</sup>lt;sup>60</sup> Article 259, CCP.

Judgement of the Supreme Court of March 18, 2014 (II PK 256/12, LEX No. 1448393).

<sup>&</sup>lt;sup>62</sup> Judgement of the Supreme Court of October 23, 2008 (V CSK 131/08, LEX No. 515449).

#### V. Conclusions

An action for violation of the right of a party to hear a case in court proceedings without unreasonable delay is intended to fulfill the right to court, which is primarily found in the Article 45 par. 1 of the Constitution of the Republic of Poland. This provision provides that everyone has the right to a fair and public hearing without unreasonable delay by a competent, impartial and independent court.

Despite the fifteen-year application of the Complaint Act, complaints about the lack of consideration of the matter within a reasonable period of time still find their final in the ECtHR. On May 16, 2019, the ECtHR found that Poland again violated the conventional standards of a fair trial in relation to the length of court proceedings<sup>63</sup>. The allegations that are raised against judgments issued by Polish courts are exactly the same as those that appeared after the introduction of the act a dozen or so years ago, that is, the amount awarded and a too formalistic and fragmented approach to the analyzed case in terms of its duration.

Ensuring effective, as quickly as possible, and at the same time respecting procedural guarantees, proceedings are the responsibility of the court that, in pursuit of this objective, should properly and skillfully apply the provisions of formal law. It is also up to the court to ensure the observance of the principle of equal rights of the parties, according to which procedural rules regulating the rights and obligations of the parties in a uniform manner, ensuring fairness and equal conditions of dispute guarantee both parties the possibility of effective and equal legal protection. It is the court's duty to implement this principle even in preventing situations in which the party would be deprived of the right to a fair trial in result of deliberate acts of the opponent<sup>64</sup>.

In addition, attention should also be paid to the amendment to the civil procedure of July 4, 2019. The most important changes that may lead to the prolongation of proceedings should certainly include the delivery of bailiffs

Judgement of the ECtHR of May 16, 2019 the case of *Ziaja v. Poland* (complaint No. 45751/10, available at: https://www.ms.gov.pl/pl/orzeczenia-etpcz/index.html?ComplainantYear=0&CaseType=Decision%2CSentence (24.06.2019).

Resolution of the Supreme Court of December 12, 2013 (III CZP 78/13, LEX No. 1506348).

not received by the defendant. Until the amendment of the civil procedure, the pleadings were sent via Polish post. Without posting the addressee, the postman left a notice and after the second and 14 days of such notification have elapsed, the package was deemed to have been successfully delivered, even if it did not finally reach the addressee. Under the new provisions of the civil procedure, if the defendant has not received the application or other pleading despite repeated notification, the court will inform the plaintiff. He will send a plaintiff a copy of the letter to the defendant and will oblige him to deliver it to the defendant via the bailiff. The waiting time for delivery of a pleading will be extended, which will result in a longer wait for the case to be heard, and hence the length of the proceedings.

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