

# NATIONAL REPORT

- POLAND -



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# GENERAL OVERVIEW

## National Legal system

Under Polish law, civil proceedings are codified. The basic legal act regulating these proceedings is the Act of 17 November 1964 – the Code of Civil Procedure (hereinafter called CCP). It has been amended many times, especially after the change of political system in 1989. Right now the CCP is composed of the introductory title, which contains general provisions (art. 1-13), and five parts with following titles: Part I) Examination of civil law cases (art. 15-6948); Part II) Proceeding to secure claims (art. 730-757); Part III) Execution proceedings (art. 758-1088); Part IV) Provisions on international civil proceedings (art. 1096-11539) and Part V) Court of Arbitration (art. 1154-1217). Another important act regulates court fees in civil cases (Act of 28 July 2005 on Court Fees in Civil Cases). Moreover, a number of issues regarding non-litigious proceedings are regulated outside the Code. The EU regulation also plays important and growing role in Polish civil proceedings. Simplification of debt collection is one of the examples.

According to Polish Code of Civil Procedure (CCP) there exist so called “ordinary proceedings” (as a rule) and “autonomous proceedings”. Among them you can distinguish also these which deal with monetary claims: a/ proceedings in business cases, b/ order for payment proceedings, c/ injunction proceedings and d/ simplified (summary) proceedings.

The proceedings in business cases only partially deal with money claims, the general aim of these proceedings is to accelerate them. They have very formal character. The order for payment proceedings (art. 4841-497 of CCP) and the injunction proceedings (art. 4971-505 of CCP) have optional character. It means that the plaintiff can choose the proceedings (ordinary or autonomous).

In addition, Polish legislator decided to include the regulation about European order of payment (art. 50515-50520 of CCP) and about European small claims procedure (art. 50521-50527) into CCP, although they are self-

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|  | <p>binding, according to EU regulations. These EU regulations have only a frame character. The regulations in CCP should be treated then as a kind of supplement to the EU regulations 1896/2006 and 861/2007. They are applicable for cross-border cases.</p>  |
| <p><b>Court jurisdiction and different types of litigation for debt collection</b></p> | <p>According to Polish Code of Civil Procedure (CCP) there exist so called “ordinary proceedings” (as a rule) and “autonomous proceedings”. Among them you can distinguish also these which deal with monetary claims: a/ proceedings in business cases, b/ order for payment proceedings, c/ injunction proceedings and d/ simplified (summary) proceedings.</p> <p>The proceedings in business cases only partially deal with money claims, the general aim of these proceedings is to accelerate them. They have very formal character. The order for payment proceedings (art. 4841-497 of CCP) and the injunction proceedings (art. 4971-505 of CCP) have optional character. It means that the plaintiff can choose the proceedings (ordinary or autonomous).</p> |
| <p><b>National summary procedures for recovery of money clames</b></p>                 | <p>The simplified (summary) proceedings is both oral and written and there is hearing in this procedure. But it constructed as a summarised procedure, so it is quicker. The summary procedures take place before district court on contracts up to PLN 10000.00 and on dwelling unit rents and payments that burden tenants irrespective of the value of the subject matter.</p>   |

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| <b>State of IT operational options in judicial procedures for recovery of money clames</b> | The CCP also regulates electronic injunction proceedings (art. 50528-50537), in power from 2010. It is a special form of the injunction proceedings (see point 1.1), so you can claim monetary debts in this procedure. The safe electronic signature is required (according to act of 2001). If the plaintiff starts action in the electronic way, he must continue it. The defendant can choose the way during his first action. This is just very beginning with the e-tools in our courts, but from 2010 more than 1,6 million cases were proceeded in this way. In only 3% of them there was an appeal. It seems to be a great success. |
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## SCOPE OF THE PROCEDURE

### Eligible claims

In Polish system there are two proceedings about national order of payment: order of payment and the injunction proceedings, with its electronic form as additional: A. The order for payment proceedings (art. 4841-497 of CCP).

Types of claims eligible: monetary claims or claims for changeable things, if the plaintiff demonstrates evidence such as: official documents, bill accepted by the debtor, declaration on confirmation of debt or returned bank payment order. The order of payment is possible also when you claim money coming from bill debts, cheques, warrants - which show no doubts about their authenticity.

There is no upper on the value of the claim, but the value of claim decides which court starts the procedure (District or Regional). If the value of claim is higher than PLN 75000.00 (around 16000.00 EUR), then the Regional Court is competent.

The use of the order of payment procedure is optional. According to art. 4841 § 2 of CCP the plaintiff has to express clearly the will to proceed in this way. This procedure is in fact not available if the defendant lives in another Member State or in a third country. According to art. 4921 § 1 of CCP the order of payment is annulled ex lege, if the delivery of it could not take place in Poland.

It is one step procedure, but of course you can appeal by charges (art. 493).

B. The injunction proceedings

In this type of procedure monetary claims as a rule are eligible, but a special regulation can apply these

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|                                       | <p>proceedings to other cases (art. 498). There is no upper value limit, but the value of claim decides which court starts the procedure (District or Regional). If the value of claim is higher than PLN 75000.00 (around 16000.00 EUR), then the Regional Court is competent.</p> <p>The injunction proceedings has untypical character. The plaintiff has no obligation to declare the will to act according to this procedure. The decision belongs to court. If the court recognizes that there are prerequisites to issue the order of payment in this procedure, it is obliged to do it. The order of payment in this procedure can't be issued if the place of stay of the defendant is not known or the delivery of the order could not take place in Poland (art. 499). It is one step procedure, but you can appeal by objections (art. 503). No representation by lawyer is required. According to the Polish system the representation by a professional lawyer is required only before the Supreme Court. In proceedings instigated before the Supreme Court only legal counsel or a barrister (adwokat) may act as attorneys ad litem.</p> |
| <b>Limit regarding value of claim</b> | There are no limits regarding value   |
| <b>Rules on using the procedure</b>   | The use of the order of payment procedure is optional. According to art. 484 § 2 of CCP the plaintiff has to express clearly the will to proceed in this way. The injunction proceedings has untypical character. The plaintiff has no obligation to declare the will to act according to this procedure. The decision belongs to court. If the court recognizes that there are prerequisites to issue the order of payment in this procedure, it is obliged to do it.  |

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| <b>Possibility of using national procedure in cross border cases</b> | <p>The order of payment procedure is in fact not available if the defendant lives in another Member State or in a third country. According to art. 492 § 1 of CCP the order of payment is annulled <i>ex lege</i>, if the delivery of it could not take place in Poland. The order of payment in the injunction proceedings can't be issued if the place of stay of the defendant is not known or the delivery of the order could not take place in Poland (art. 499).</p> |
| <b>Number of steps</b>   | <p>The order of payment proceedings: it is one step procedure, but of course you can appeal by charges (art. 493).</p>   |
| <b>Rules on representation by a lawyer</b>                           | <p>The injunction proceedings: it is one step procedure, but you can appeal by objections (art. 503).</p>  |

# COMPETENT COURTS

## According to matter and according to territory

All district and regional courts are competent *ratione materiae* in these proceedings. The domestic jurisdiction shall be Rules regarding general jurisdiction:

1) Proceedings should be instituted with the court of first instance with jurisdiction over the defendant's domicile, understood according to the rules of civil code (art. 25 - a natural person's domicile is the place in which he normally resides) – art. 27.

2) If defendant has no domicile in Poland, general competence exists according to the place of his residence, if it is known and if he has one in Poland – if not - according to his last domicile in Poland – art. 28.

3) Proceedings against the Treasury should be instituted in the court with jurisdiction over the place in which the establishment concerned by the dispute is located – art. 29.

4) Proceedings against other legal person or non-legal person should be instituted in the court with jurisdiction over its business office – art. 30.

of concurrent jurisdiction (which means, according to art. 31, that proceedings can be instituted according to the rules regarding general jurisdiction or other rules specified in art. 32-37 of CCP.

Stablished according to foregoing rules, the competence of the courts in Poland shall be regulated by general rules applied to any proceedings. There is no special rules concerning jurisdiction in the European cases, also there is no one central competent court. The rules to be applied are as follows: The local and substantive jurisdiction of the courts is defined in the Code (substantive - art. 16, 17, 461(1)1, local – art. 27-46, 461(1)1). exclusive jurisdiction (which means that the petitioner can institute proceedings only in the court indicated in the CCP) in cases:

1) Of ownership or other rights in rem to real estate or possession of real estate - the court with

jurisdiction over the place where the real estate is located; if an easement is the subject of the dispute, jurisdiction is determined according to the place where the encumbered property is located;

- 2) Of inheritance or conservation by virtue of a letter, instruction or other form of will –the court with jurisdiction over the testator's last domicile and, where it is not possible to determine their domicile in Poland, the court with jurisdiction over the place in which the inheritance, or part thereof, is located;
- 3) By virtue of membership of a cooperative, company or association - the court with jurisdiction over the place where the body's registered office is located;
- 4) By virtue of marriage –the court with jurisdiction over the place in which the couple's last joint domicile is located if one or both of them is still permanently resident there. where that is not the case, the court with jurisdiction over the domicile of the defendant has exclusive jurisdiction; where that is not applicable either, the court with jurisdiction over the domicile of the petitioner has exclusive jurisdiction;
- 5) By virtue of a parental relationship or relationship between an adopter and adoptee - the court with jurisdiction over the domicile of the petitioner, in so far as there is no basis on which to institute proceedings under the rules governing general jurisdiction.

Of special jurisdiction (in the cases indicated in the special rules of CCP there may be a different way to establish court jurisdiction):

- 1) The petitioner is authorised to choose the court (if there are grounds for one court to have jurisdiction or if proceedings are instituted against several persons in respect of whom different courts have jurisdiction under the rules governing general jurisdiction or where real estate whose location determines jurisdiction is situated in several judicial districts) – art. 43.
- 2) Both parties are authorised to choose the court further to an agreement or joint application; the parties may agree in writing to submit an existing dispute which has arisen from a given legal relationship or potential future disputes to a court of first instance which does not have local jurisdiction under the law; this court will then have exclusive jurisdiction, unless the parties decide otherwise; they are also allowed to restrict the right of the petitioner to choose between courts with jurisdiction in respect of such disputes, by

written agreement; they are not allowed to change exclusive jurisdiction – art. 46.

3) If the court with jurisdiction is precluded from hearing the case or taking other action, the higher court designates another court; another court is designated only where the court with jurisdiction is precluded from hearing the case.

4) The Supreme Court is required to designate the court before which proceedings should be instituted if, within the meaning of CCP, it is not possible to establish local jurisdiction with reference to the facts of the case.

# APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

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| <p><b>Availability of standardized form and form description</b></p>      | <p>Application for an order of payment should fulfil the general requirements of the petition in ordinary cases (art. 187 of CCP). However, the plaintiff has to declare the demand to have the case examined in the order of payment procedure. In some cases (art. 1871 of CCP), when the plaintiff is an entrepreneur performing services such as telecommunication, postal service, delivery of electricity and gas, water, sewage services or heating – he is obliged to fill in an official standardised form (from July 2002).</p> |
| <p><b>Rules on representation by a lawyer</b></p>                         | <p>Representation by a lawyer is not mandatory.</p>   |
| <p><b>Description of the reasons for the claim</b></p>                    | <p>The reasons for the claim, like in the ordinary procedure, must be described. But the most important is to present official documents confirming the claim.</p>  |
| <p><b>Need for written evidence and documents admissible as proof</b></p> | <p>It is mandatory to present official documents. The plaintiff has to demonstrate evidence such as: official documents, invoice, bill accepted by the debtor, declaration on confirmation of debt or returned bank payment order. The order of payment is possible also when you claim money coming from bill debts, cheques, warrants - which show no doubts about their authenticity. They must be in written form.</p>  |

**Option of electronically filing the form**

In this type of procedure the application cannot be filed electronically. Although there is a provision in art. 1872 of CCP, but so far the Minister of Justice has not issued the regulation describing details of the electronic application in these kind of cases. The reasons for the claim should be presented in detail in both injunction and electronic injunction proceedings. However, in the electronic injunction proceedings you don't have to attach the evidence to the application (art. 50532 § 1 of CCP).

The written evidence must be presented in the injunction proceedings. The evidence can be of any kind. However in the electronic injunction proceedings you don't have to attach the evidence to the application (art. 50532 § 1 of CCP).

The essence of the electronic injunction proceedings is to fill in the application electronically. If the plaintiff sends next future correspondence to court by mail, it is not binding for court. If the defendant also uses an electronic way, he has to follow it till the end of the procedure. However, the court has to inform him about the consequences of using the electronic way.

## ISSUE OF THE ORDER OF PAYMENT

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| <b>Specific rules for dealing with submitted apps for order of payment and court decision</b> | In the order of payment procedure the court has the obligation to check if the petition has no formal defects. Then the court checks if the presented documents are completed and show no doubts about their authenticity. If there is no grounds to issue the order of payment, the court disposes hearing (art. 486 of CCP). If there are grounds, the court issues the order of payment. In the order of payment the court decides that the defendant is obliged in two weeks' time to fulfil the claim together with the cost of the case or in the same time the defendant will submit objection against the order of payment. The order of payment must be delivered to both parties, but the defendant gets also the plaintiff's application for order of payment with attachments (art. 491). |
| <b>Decision of the court on the payment order</b>   | Rejection of application is possible only if the application does not fulfil the formal requirements of the petition (art. 130 of CCP). If there is no grounds for issuing the order of payment, the court disposes hearing (art. 486).   |
| <b>Existence of guidelines for submitting application</b>                                     | There are no instructions on the order for payment requirement.   |

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| <b>Defendant's service of the order of payment</b> | The order of payment proceedings: the order of payment must be delivered to both parties, but the defendant gets also the plaintiff's application for order of payment with attachments (art. 491). The injunction proceedings: the order of payment must be delivered to the defendant together with the application and with the information about the way to state the opposition and about the consequences of not opposing to the order of payment. |
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## REJECTION OF THE APPLICATION

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| <b>Grounds for rejecting application</b> | The order of payment proceedings: rejection of application is possible only if the application does not fulfil the formal requirements of the petition (art. 130 of CCP). If there is no grounds for issuing the order of payment, the court disposes hearing (art. 486). The injunction proceedings: the rejection is also possible due to formal reasons. If there is no grounds for issuing the order of payment, the court disposes hearing (art. 498 § 2 of CCP). In the electronic injunction procedure the application should be submitted together with the court's fee. If the application is submitted without fee, it causes no effect and court returns the application. |
| <b>Appeal availability (creditor)</b>    | The creditor can appeal  |

# OPPOSITION BY THE DEFENDANT

## Procedural rules

Opposition by the defendant (objection against order for payment) – prerequisites and procedure, especially:

A. In the order of payment procedure the defendant can, in two weeks' time, declare charges against order of payment (art. 493). He should point out if he is against the order of payment as a whole or only against a part of it. He should also point out the charges and the complete evidence confirming them. The counterclaim is not allowed. If the charges are properly lodged, the court will appoint hearing and will send the objection to the plaintiff (art. 495). The procedure is quite formal then. You can't present any new claims instead of or together with the earlier claims. There are two small exceptions concerning it: a/ you can extend the claim on consecutive performances (on new periods) and b/ you claim instead of the original object of claim, its value or another object – if the situation changed. There are also important limitations concerning evidence – if it hasn't been pointed out in the application or in the objection, it can't be recognized by the court. There are some exceptions - if the party couldn't cite them earlier or the need to cite them has occurred later. The plaintiff has a period of one week granted from the time of receiving the objection to present new facts and evidence (art. 495 § 3). Polish system is constructed in this way that the court upholds the order for payment and decides about its destiny with judgment in the subsequent litigation. After the hearing the court will pass a judgement in which he can sustain the order of payment in corpore or in part or he can annul the order of payment and decide on the merits of the case.

B. In the injunction procedure the defendant in two weeks' time from the delivery of the order of payment can declare objection against it. He should point out if he is against the order of payment as a whole or only against a part of it. He should also point out the objections and the complete evidence

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|   | <p>confirming them. They should be presented before <i>litiis contestatio</i>, if not - they will be lost. In the injunction procedure, if the objection is properly lodged, the order of payment loses its effect <i>ex lege</i> (art. 505) and normal hearing is designated.</p> <p>In the electronic injunction procedure the objection against order of payment should not be motivated and evidence should not have to be presented as well. However, in the objection you should present pleas, the latest moment is before <i>litiis contestatio</i> (art. 50535). If the objection is properly lodged, the order of payment loses its effect <i>ex lege</i> (art. 50536) and the case is sent to court which is competent according to general rules of jurisdiction.</p> |
| <b>Substantiated order of payment requirement</b> | It is required  |
| <b>Effects of notice of opposition</b>            | The order of payment proceedings: if the charges are properly lodged, the court will appoint hearing and will send the objection to the plaintiff (art. 495).   |
| <b>Nature of the structure of the procedure</b>   | The injunction proceedings: if the objection is properly lodged, the order of payment loses its effect <i>ex lege</i> (art. 505) and the case is sent to court which is competent according to general rules of jurisdiction.   |

## EFFECTS OF ABSENSE OF TIMELY OPPOSITION

### **Consequences on not filing opposition**

If the objection is not filed, the defendant recognizes the justification of the claim. The order of payment is a title of execution. When the order of payment is a final judgment (enforceable and final), the court immediately issues a declaration of enforceability on its own motion (ex lege) - art. 782 § 2 of CCP . It refers to all orders of payment. It is possible to appeal against this decision – art. 795 of CCP. In the electronic injunction procedure the appeal must be done electronically.

## COURT FEES

There are five following kinds of fees: a) permanent fees, b) proportional fees, c) basic fees, d) provisional and final fees and e) clerical fees. The court fees are the charges for specific actions taken by the court as a result of written statement of claim or defence in a court action. Expenses are the costs connected with hearing of evidence and some other court actions. Court fees are collected in the whole or in fragmentary parts. For instance  $\frac{3}{4}$  of the whole fee is collected for defendant's charges in a case of order for payment in the command procedure,  $\frac{1}{4}$  in a case of petition in the command procedure,  $\frac{1}{2}$  in a case of application to annul the European order of payment (not less than PLN 30).

The permanent fees are collected in cases concerning non-material rights (when the value of the claim does not exist) and some specific material rights (when it is difficult to estimate precisely the value of the claim). Amount of fees oscillates between PLN 30 and 5000. For instance the permanent fee of PLN 300 is collected for petitions concerning determination of recognition of foreign court or organ judgment (decision) and concerning confirmation of the enforceability of judgment (decision) handed down by a foreign court (organ) or of agreement in court (organ) or approved by a court (organ). The permanent fee of PLN 100 is charged for petition in a case of European small claims procedure.

# ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

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| <b>Domestically</b> | <p>When the order of payment is a final judgment (enforceable and final), the court immediately issues a declaration of enforceability on its own motion (ex lege) - art. 782 § 2 of CCP. For cross-border enforcement the European Enforcement Order for Uncontested Claims would be useful. It is partially regulated in art. 7951 – 7955 of CCP.[1]</p> <p>[1] See fundamental book about in Polish literature: K. Weitz, Europejski tytuł egzekucyjny dla roszczeń bezspornych [The European Enforcement Order for Uncontested Claims] (LexisNexis 2009). See also: M. Arciszewski, Europejski Tytuł Egzekucyjny w teorii i praktyce [The European Enforcement Order in the theory and practice], (C. H. Beck 2007).</p>  |
| <b>Abroad</b>       | <p>When the order of payment is a final judgment (enforceable and final), the court immediately issues a declaration of enforceability on its own motion (ex lege) - art. 782 § 2 of CCP. For cross-border enforcement the European Enforcement Order for Uncontested Claims would be useful. It is partially regulated in art. 7951 – 7955 of CCP.[1] The national order of payment procedure in its three versions (order of payment, injunction procedure, electronic injunction procedure) seems to be quite simple way for domestic debt collection. Especially the electronic procedure is a big simplification and it is becoming more and more popular. You may discuss the regulation that only one District Court is designated to proceed in this way. If there is no cross-border element, the procedure is sufficient to protect the creditor.</p> |

## COMPARING NATIONAL AND EU ORDER FOR PAYMENT

The national order of payment procedure in its three versions (order of payment, injunction procedure, electronic injunction procedure) seems to be quite simple way for domestic debt collection. Especially the electronic procedure is a big simplification and it is becoming more and more popular. You may discuss the regulation that only one District Court is designated to proceed in this way. If there is no cross-border element, the procedure is sufficient to protect the creditor.