

**SIMPLIFICATION OF DEBT COLLECTION IN THE EU:  
*QUESTIONNAIRE***

**(European Order for Payment Procedure and European Small Claims Procedure)**

**Terminology used in the questions**

Since a unified terminology certainly can ease the comparison between country reports for the purposes of this questionnaire the following definitions shall apply:

"judgment": any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;

"final judgment": = rechtskräftig = judgement which is binding to parties and against which generally no ordinary legal remedy is allowed

"claim": a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument;

"authentic instrument": (a) a document, which has been formally drawn up or registered as an authentic instrument, and the authenticity of which:  
(i) relates to the signature and the content of the instrument; and  
(ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;  
or  
b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;

"Member State of origin": the Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered;

"Member State of enforcement": the Member State in which enforcement of the judgment, court settlement or authentic instrument is sought;

"court": any authority in a Member State with competence regarding European orders for payment or any other related matters;

"title of execution": = *titre exécutoire* = *Vollstreckungstitel* = executory title = enforceable title = instruments upon which the enforcement commences, e.g. judgement rendered by the court, court settlement, enforceable notary deed, arbitral award etc.

## **Questionnaire for national reports**

### **I. Introduction - main features of the national summary procedures for recovery of monetary claims (general overview)**

#### 1.1

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. 15-694<sup>8</sup>); Part II) Proceeding to secure claims (art. 730-757); Part III) Execution proceedings (art. 758-1088); Part IV) Provisions on international civil proceedings (art. 1096-1153<sup>9</sup>) and Part V) Court of Arbitration (art. 1154-1217).<sup>1</sup> Another important act regulates court fees in civil cases (Act of 28 July 2005 on Court Fees in Civil Cases)<sup>2</sup>. 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. 484<sup>1</sup>-497 of CCP) and the injunction proceedings (art. 497<sup>1</sup>-505 of CCP) have optional character. It means that the plaintiff can choose the proceedings (ordinary or autonomous).

The order for payment proceedings and injunction proceedings are written (no hearing). 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.

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<sup>1</sup> For general overview of Polish civil procedure see: F. Zedler, 'Civil Procedure', in W. Dajczak, A. J. Szwarc, P. Wiliński, I. Grenda (eds.), Handbook of Polish Law (Wydawnictwo Szkolne PWN 2011) p. 609-661.

<sup>2</sup> Dz. U. [Journal of Laws] No. 167, item 1398, as amended.

The order of payment proceedings (sometimes called command proceedings) is constructed for claims determined on the basis of documents (as a rule: official documents, bills of exchange, cheques, letters of indemnity and warrants).

The injunction proceedings, by an order of payment of a lesser value, which may be conducted in all pecuniary claim cases, by issuing an order of payment on the basis of the petition alone.

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.

In addition, Polish legislator decided to include the regulation about European order of payment (art. 505<sup>15</sup>-505<sup>20</sup> of CCP) and about European small claims procedure (art. 505<sup>21</sup>-505<sup>27</sup>) into CCP, although they are self-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.

## 1.2

The CCP also regulates electronic injunction proceedings (art. 505<sup>28</sup>-505<sup>37</sup>), 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. The District Court in Lublin is the only one designated to apply it – for the whole Poland. There are about 110 judges and court clerks (*referendarz*) working together in this section, among them three judges only.<sup>3</sup>

## 1.3

The payment orders are content-related decisions which allow the claim in the proceedings by writ of payment and the injunction proceedings (it may be also called the proceedings by writ of payment for a lesser value) and an European payment order. The payment orders issued in the proceedings by writ of payment are subject to appeal by charges (*zarzut*) and others by objections (*sprzeciw*). Those measures are heard by the courts which have issued the payment order.

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<sup>3</sup> 'W bieżącym roku już milion spraw wpłynęło do e-sądu' [This year over one million cases in the e-court], *Gazeta Prawna*, 27 August 2011, p. 3.

The provisional enforceability (a kind of) is possible under art. 492 of CCP in order of payment procedure. According to it - the order of payment, from the moment it was passed, is automatically enforceable title, although it is not binding yet.

1.4

The enforcement (execution) procedure is regulated in CCP (art. 758-1088). To obtain information about a debtor's assets you can:

Before an enforceable judgement – according to art. 797<sup>1</sup> of CCP the creditor can entrust the court executive officer to search for the debtor's property, with a pecuniary remuneration.

After an enforceable judgement - the general regulation (art. 761) says that the court executive officer can demand information about debtor's assets from public administration offices, tax offices, banks, brokers, housing enterprises, pension offices and from any other institutions and persons.

The more radical regulation comes from art. 913 § 1 of CCP – the disclosure of property by the debtor. If the debtor's property, already attached, does not cover the debt, the creditor can demand the disclosure of property. The disclosure is in the form of court's oath. According to art. 913 § 2 the creditor can demand the disclosure of property even before the formal beginning of the enforcement procedure, when he proves that he would not get full compensation from the debtor's property he knows.

## **II. National order for payment procedure**

2.1.

In Polish system there are two proceedings about national order of payment: order of payment (see: A, below) and the injunction proceedings, with its electronic form as additional (see: B, below).

### A. The order for payment proceedings (art. 484<sup>1</sup>-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. 484<sup>1</sup> § 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. 492<sup>1</sup> § 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).

No representation by lawyer required, but in reality most of these cases are conducted by professional lawyers.

#### B. The injunction proceedings

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

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*.<sup>4</sup>

#### 2.2.

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

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<sup>4</sup> F. Zedler, 'Civil Procedure', in W. Dajczak, A. J. Szwarc, P. Wiliński, I. Grenda (eds.), Handbook of Polish Law (Wydawnictwo Szkolne PWN 2011) p. 624.

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).

Rules regarding substantive jurisdiction:

- 1) district courts have jurisdiction in all civil cases (in the first instance) with the exception of cases reserved to regional courts (art. 16).
- 2) the regional courts are competent in cases of:
  - a) non-material rights (such as divorce) and related claims other than the following: establishment or contestation of a child's parentage, renunciation of parenthood or dissolution of adoption;
  - b) protection of copyright and related rights and rights concerning inventions, utility models, designs, trademarks, geographical indications and topographies of integrated circuits, protection of other rights involving intangible goods;
  - c) claims under the Press Act;
  - d) property rights where the value of the disputed item is more than PLN 75 000, and PLN 100 000 in business proceedings, except in cases concerning: alimony, ownership disputes, liquidation of matrimonial property between spouses, alignment of the contents of the land register with the law as it stands;
  - e) the issue of a ruling replacing a resolution on the division of a cooperative;
  - f) the annulment, declaration of invalidity or establishment of the null and void status of resolutions issued by legal persons or by organisations which are not legal persons but which have been granted legal personality by law;
  - g) the prevention of, and measures to eradicate, unfair competition;
  - h) compensation for a damage caused by final unconstitutional judgment (art. 17).
- 3) the regional courts are also competent in: cases involving legal incapacity; dispute resolution in cases involving the operation of nationalised companies: between a company's board and the director, between a company's internal bodies and the founding authorities and between a company's internal bodies and the supervisory body;
- 4) the district courts are competent in cases involving the recognition and confirmation of the enforceability of judgments handed down by foreign courts; according to art. 1148<sup>1</sup> in cases of the recognition the competent one is: the court which could be competent in the case decided by a foreign court or the one in which district a regional court having territorial jurisdiction is situated, when lack of the grounds – Warsaw district court, under art. 1151<sup>1</sup> in cases of confirmation of the enforceability of judgments handed down by foreign courts – the

court competent according to domicile or business office of the debtor, when lack of this court – according to the place (district) where an execution has to take place.

5) in cases regarding labour law both kinds of courts can be competent, district courts according to general jurisdiction rules or to the place where work is, has been or is to be carried out, eventually to the place (district) where the working place is situated; regional courts are competent, regardless the value of the object of the dispute, in cases concerning establishment of existence of labour relation, recognition of ineffectiveness of labour agreement denunciation, restitution to work or restitution of previous terms of work or pay and also claims jointly enforced, and compensation in cases of unjustified or law-breaking notice and termination of labour relation, also cases regarding nominal fines and reference and also claims connected with them (art. 461 (1) and (1<sup>1</sup>)).

Rules regarding local jurisdiction:

of 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:

1) the petitioner can institute proceedings in the court with general jurisdiction or in the other court indicated:

a) the court with jurisdiction over the domicile of the plaintiff (maintenance claims, establishment of paternity and related claims);

b) the court with jurisdiction over the place in which the defendant's establishment or business is located (if the claim is connected to the activities carried out by that establishment or business property claims connected to the defendant's business activities);

- c) the court with jurisdiction over the place of performance of the disputed contract (actions to establish the existence of a contract or to have it performed, annulled or declared null and void and actions for damages for non-performance or improper performance of a contract); in the event of any doubts arising, documentary evidence should be provided of the place of performance of the contract;
- d) the court with jurisdiction over the place where the harmful event occurred (claims arising out of a tort/delict);
- e) the court with jurisdiction over the place where the legal representative handled the case in question (claims for payment of case fees);
- f) the court with jurisdiction over the place where the real estate is located (claims relating to the rental or lease of real estate);
- g) the court with jurisdiction over the place of payment (actions against the issuer of a bill or cheque); several issuers of a bill or cheque can be arraigned jointly before the court with jurisdiction over the place of payment or before the court with general jurisdiction for the drawee or the issue of promissory notes or cheques;
- h) the court with jurisdiction over the place of performance of the contract (actions to conclude, establish the contents of or amend a contract, heard in separate proceedings in cases involving business law) – according to art. 479, read in conjunction with art. 34 of CCP;
- i) the court with jurisdiction over the place where the work is, has been or is to be carried out, or before the court with jurisdiction over the place where the workplace in question is located (actions pertaining to labour law) - according to above mentioned art. 461(1) of CCP.  
of 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.

2.3.

#### A. Order of payment

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. 187<sup>1</sup> 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).

It is not necessary to be represented by a lawyer

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.

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.

In this type of procedure the application cannot be filed electronically. Although there is a provision in art. 187<sup>2</sup> 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.<sup>5</sup>

#### B. Injunction and electronic injunction proceedings.

Application in the injunction proceedings should fulfil the general requirements of the petition in ordinary cases (art. 187 of CCP). The plaintiff doesn't have to declare the demand to have the case examined in these proceedings. In some cases (art. 187<sup>1</sup> of CCP), when the plaintiff is an entrepreneur performing services such as telecommunication, postal services, delivery of electricity and gas, water, sewage services or heating – he is obliged to fill in an official standardised form (from July 2002). In the electronic injunction proceedings the electronic application must additionally include: personal identification number of the plaintiff, tax identification number (concerns only legal persons) and number in the business evidence (art. 505<sup>32</sup> § 2 of CCP).

It is not necessary to be represented by lawyer.

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. 505<sup>32</sup> § 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. 505<sup>32</sup> § 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

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<sup>5</sup> A. Zieliński (ed.), Kodeks postępowania cywilnego. Komentarz [The Code of Civil Procedure. Commentary], (C. H. Beck 2011) p. 338-339.

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.

2.4.

A. The order of payment procedure

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. The injunction procedure

In the injunction procedure the court also is obliged to check if the petition has no formal defects. If there is no grounds to issue the order of payment, the court disposes hearing (art. 498 § 2 of CCP). The order of payment can't be issued in this procedure, if according to the petition: 1) the claim is obviously groundless, 2) the circumstances described in the petition are doubtful, 3) fulfilling the claim is dependent on mutual obligation, 4) the place of stay of the defendant is not known or the delivery of the order of payment would not be done in Poland (art. 499 of CCP). 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 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.

2.5.

A. The order of payment procedure.

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. The injunction procedure.

In 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.

## 2.6.

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 confirming them. They should be presented before *litiis contestatio*, if not - they will be lost. In the injunction procedure, if the objection is properly lodged, the order of payment loses its effect *ex lege* (art. 505) and normal hearing is designated.

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 *litiis contestatio* (art. 505<sup>35</sup>). If the

objection is properly lodged, the order of payment loses its effect *ex lege* (art. 505<sup>36</sup>) and the case is sent to court which is competent according to general rules of jurisdiction.

2.7.

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.

2.8.

Costs of procedure are all the costs connected with the procedure, if they are met in judgment ending the procedure, or as defined in CCP – costs indispensable to deliberately assert one's rights and deliberately defend.<sup>6</sup> They are mostly described in the Act of 28<sup>th</sup> of July 2005 on court fees<sup>7</sup>, but also regulated by many other legal acts, as: Act of 29<sup>th</sup> of August 1997 on court bailiffs and enforcement<sup>8</sup>, Act of 25<sup>th</sup> of November 2004 on sworn translators<sup>9</sup>, Act of 5<sup>th</sup> of July 2002 on the provision of legal services by foreign lawyers<sup>10</sup>, Decree of 26<sup>th</sup> of October 1950 on amounts due to witness, experts and parties<sup>11</sup>, Regulation of 18<sup>th</sup> of December 1975 on the costs of taking the evidence from expert opinions in court proceedings<sup>12</sup>, Regulation of 31<sup>st</sup> of October 1983 on remuneration of an expert (translator) in the area of sign language<sup>13</sup>, Regulation of 4<sup>th</sup> of July 1990 on the amount of compensation due to witnesses and parties in court proceedings<sup>14</sup>, Regulation of 28<sup>th</sup> of August 2002 on fees for legal counsel services<sup>15</sup>, Regulation of 28<sup>th</sup> of September 2002 on fees for advocate services<sup>16</sup>, Regulation of 28<sup>th</sup> of June 2004 on maximum rates of notary<sup>17</sup>, Regulation of 30<sup>th</sup> of November 2005 on fees and remuneration for mediators in civil proceedings<sup>18</sup>, Regulation of 10<sup>th</sup> of March 2006 on fees for bailiff services for acts of non-execution<sup>19</sup> and also the Code

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<sup>6</sup> Art. 98(1) of CCP.

<sup>7</sup> Dz. U. [Journal of Laws] 2005 No. 167, item 1398, as amended.

<sup>8</sup> Dz. U. [Journal of Laws] 1997 No. 133, item 882, as amended.

<sup>9</sup> Dz. U. [Journal of Laws] 2004 No. 273, item 2702, as amended.

<sup>10</sup> Dz. U. [Journal of Laws] 2002 No. 126, item 1069, as amended.

<sup>11</sup> Dz. U. [Journal of Laws] 1950 No. 49, item 445, as amended.

<sup>12</sup> Dz. U. [Journal of Laws] 1975 No. 46, item 254, as amended.

<sup>13</sup> Dz. U. [Journal of Laws] 1983 No. 64, item 292, as amended.

<sup>14</sup> Dz. U. [Journal of Laws] 1990 No. 48, item 284, as amended.

<sup>15</sup> Dz. U. [Journal of Laws] 2002 No. 163, item 1349, as amended.

<sup>16</sup> Dz. U. [Journal of Laws] 2002 No. 163, item 1348, as amended.

<sup>17</sup> Dz. U. [Journal of Laws] 2004 No. 148, item 1564, as amended.

<sup>18</sup> Dz. U. [Journal of Laws] 2005 No. 239, item 2018, as amended.

<sup>19</sup> Dz. U. [Journal of Laws] 2006 No. 42, item 289, as amended.

of Civil Procedure. Besides the court fees (presented below), there are costs of personal appearance of a party in a court, costs of representation of a lawsuit and costs of participation of mediator. They will be charged only when a party, a proxy or a mediator will participate in the proceedings.<sup>20</sup>

There is a general rule that a participant in the legal proceedings is obliged to pay the amount determined in legal acts before taking an action. A fee should be paid upon filing a pleading (petition, writ or any other letter). A failure to pay might lead to the return of a plea after an ineffective deadline for supplementation.<sup>21</sup> When it is a plea of a person having domicile or seat abroad without a representative in Poland, a court will determine the deadline not shorter than one month to discharge a fee.<sup>22</sup> The general rule comes from provision of CCP, providing that a court will not take any action concerning an unpaid writ (petition).<sup>23</sup> The costs of bringing an action to the court depend on the type of proceedings described in legal acts. The Act on court fees provides for fees and expenses. 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.<sup>24</sup> 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.<sup>25</sup> 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)<sup>26</sup>.

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

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<sup>20</sup> K. Knoppek, *Postępowanie cywilne w pytaniach i odpowiedziach* [Civil procedure in questions and answers] (LexisNexis 2010) p. 275.

<sup>21</sup> [https://e-justice.europa.eu/attachments/cost\\_study\\_poland\\_en.pdf](https://e-justice.europa.eu/attachments/cost_study_poland_en.pdf) visited 15 August 2011.

<sup>22</sup> Art. 130(1<sup>1</sup>) of CCP.

<sup>23</sup> Art. 126<sup>2</sup> of CCP.

<sup>24</sup> Art. 11-21 and 77-78 of the Act on court fees.

<sup>25</sup> Knoppek, *supra* n. 27, p. 275.

<sup>26</sup> Art. 19 and 20 of the Act on court fees.

in court (organ) or approved by a court (organ).<sup>27</sup> The permanent fee of PLN 100 is charged for petition in a case of European small claims procedure.<sup>28</sup>

In summary procedures the fee for petition is permanent, if there is an established value of the claim or value of the subject of a contract, and a fee in appeal from a judgment is PLN 30 (when a value of the subject of appeal is no more than PLN 2 000), PLN 100 (more than PLN 2 000, no more than PLN 5 000), PLN 250 (from PLN 5 000 to 7 500), PLN 300 (more than PLN 7 500).<sup>29</sup>

The proportional fees depend on the value of the claim. They are collected in cases concerning material rights, are calculated by the plaintiff – there should be 5% of the value of the claim (2% in group actions), not less than PLN 30, no more than PLN 100 000. If the plaintiff is represented by legal counsel, advocate or patent agent and the proportional court fee has been calculated incorrectly, the claim should be returned by the court.<sup>30</sup> Basic fees are collected where no proportional, provisional, permanent fees are charged – it is always PLN 30. The provisional fees are discharged in cases concerning material rights when the value of the claim cannot be estimated at the moment of commencement of the legal proceedings. Amount of fees oscillates between PLN 30 and 1000 (100 and 10 000 in group actions). The final determination of court costs in a case is settled by the court in the final adjudication, so the final fees can have a character of the proportional fees, when the value of the claim has been estimated, or of the fees individually determined by the court. The amount of the individual fees depends on social significance and the extent of complication, but it is no more than PLN 5000. The clerical fees are collected in cases of specific court actions, but they are mainly based on necessity to receive money for issuing copies (PLN 1 per page) or certified copies of documents filed with the case files (PLN 6 per page, twice more if in foreign language).

## 2.9.

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

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<sup>27</sup> Art. 24.

<sup>28</sup> Art. 27b.

<sup>29</sup> Art. 28.

<sup>30</sup> Art. 130<sup>2</sup> of CCP, also A. Górski, 'Uwagi o ustawie o kosztach sądowych w sprawach cywilnych' [Remarks concerning the act on court fees in civil cases], in W. Czapliński, A. Wróbel (eds.), *Współpraca sądowa w sprawach cywilnych i karnych* [Judicial cooperation in civil and penal cases] (C. H. Beck 2007) p. 35-36.

cross-border enforcement the European Enforcement Order for Uncontested Claims would be useful. It is partially regulated in art. 795<sup>1</sup> – 795<sup>5</sup> of CCP.<sup>31</sup>

2.10.

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.

### **III. Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States**

In 2008 the Polish Code of Civil Procedure has been amended to comply with regulations of the Regulation No 1896/2006 and also to introduce rules complementary to them. In a title regarding the examination of civil law cases in the separate/special procedures a new part regulating procedures in the cross-border cases, inter alia the European order for payment procedure (art. 505<sup>15</sup>-505<sup>20</sup>) has been settled. Also the rules concerning the enforceability of the European orders for payment have been added – regulating two questions: the enforceability of the orders issued in other member state of EU (art. 1153<sup>4</sup>-1153<sup>6</sup>) and issued in Poland (art. 795<sup>6</sup>-795<sup>7</sup>).<sup>32</sup>

3.1

Under art. 6 of Regulation No 1896/2006, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001 (however, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the member state in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No 44/2001<sup>33</sup>, shall have jurisdiction;).

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<sup>31</sup> 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).

<sup>32</sup> J. Maliszewska-Nienartowicz, 'Europejski nakaz zapłaty (rozporządzenie 1896/2006)' [European order for payment (regulation 1896/2006)], in A. Wróbel (ed.), Stosowanie prawa Unii Europejskiej przez sądy [Application of EU law by courts] (Lex Wolter Kluwer business 2010) p. 467-468.

<sup>33</sup> 1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. 2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

As a consequence the following rules of Regulation (EC) No 44/2001 are applied, remembering about the scope of application of the Regulation 1896/2006<sup>34</sup>, which means in general that:

- 1) person domiciled in a Member State shall, whatever his nationality, be sued in the courts of that Member State;
- 2) person who is not national of the Member State in which he is domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State;
- 3) person domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in sections regarding special jurisdiction, jurisdiction in matters relating to insurance, jurisdiction over consumer contracts, jurisdiction over individual contracts of employment, exclusive jurisdiction and prorogation of jurisdiction of the Regulation (EC) No 44/2001; in particular the rules of national jurisdiction set out in Annex I to the Regulation (EC) No 44/2001 shall not be applicable as against them.
- 4) if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 (exclusive jurisdiction) and 23 (prorogation of jurisdiction) of the Regulation (EC) No 44/2001, be determined by the law of that Member State; as against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I to the Regulation (EC) No 44/2001, in the same way as the nationals of that State.

As in regard to special jurisdiction:

- 1) a person domiciled in a Member State may, in another Member State, be sued:
  - a) in matters relating to a contract, in the courts for the place of performance of the obligation in question: for the purpose of the provision and unless otherwise agreed, the place of performance of the obligation in question shall be: in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered; in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

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<sup>34</sup> The scope of application of the Regulation 1896/2006 is limited, it shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii"), it shall not apply to: (a) rights in property arising out of a matrimonial relationship, wills and succession; (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (c) social security; (d) claims arising from non-contractual obligations, unless: (i) they have been the subject of an agreement between the parties or there has been an admission of debt, or (ii) they relate to liquidated debts arising from joint ownership of property.

- b) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
  - c) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
  - d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
  - e) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
  - f) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;
  - g) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question: (a) has been arrested to secure such payment, or (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.
- 2) a person domiciled in a Member State may also be sued:
- a) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
  - b) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
  - c) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

d) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

3) where by virtue of the Regulation (EC) No 44/2001 a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

As in regard to jurisdiction in matters relating to insurance:

1) an insurer domiciled in a Member State may be sued: (a) in the courts of the Member State where he is domiciled, or (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2) an insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3) in respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred; the same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

4) in respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured; articles 8, 9 and 10 of the Regulation (EC) No 44/2001 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted; if the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

5) without prejudice to Article 11(3) of the Regulation (EC) No 44/2001, an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.

6) the provisions of the Section concerning jurisdiction in matters relating to insurance of the Regulation (EC) No 44/2001 shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

a) the provisions of the Section concerning jurisdiction in matters relating to insurance of the Regulation (EC) No 44/2001 may be departed from only by an agreement: a) which is

entered into after the dispute has arisen, or b) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in the Section of the Regulation (EC) No 44/2001, or c) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or d) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or e) which relates to a contract of insurance in so far as it covers one or more of the following risks: 1. any loss of or damage to: (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes; (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; 2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage: (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks; (b) for loss or damage caused by goods in transit as described in point 1(b); 3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire; 4. any risk or interest connected with any of those referred to in points 1 to 3; 5. notwithstanding points 1 to 4, all "large risks" as defined in Council Directive 73/239/EEC(7), as amended by Council Directives 88/357/EEC(8) and 90/618/EEC(9), as they may be amended.

As in regard to jurisdiction over consumer contracts:

1) in matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001, without prejudice to Article 4 and point 5 of Article 5 of this Regulation, if: (a) it is a contract for the sale of goods on instalment credit terms; or (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2) where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

3) the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001 shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

4) a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled; proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled; it shall not affect the right to bring a counter-claim in the court in which, in accordance with the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001, the original claim is pending.

5) according to art. 6(2) of the Regulation No 1896/2006 the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No 44/2001, shall have jurisdiction. Which probably means that provision of art. 17 of the Regulation 44/2001 shall not be applied<sup>35</sup> (the provisions of the Section regarding jurisdiction over consumer contracts may be departed from only by an agreement: 1. which is entered into after the dispute has arisen; or 2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or 3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State).

As in regard to jurisdiction over individual contracts of employment:

1) where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in

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<sup>35</sup> W. Sadowski, M. Taborowski, *Przestrzeń Wolności, Bezpieczeństwa i Sprawiedliwości Unii Europejskiej. Współpraca Sądowa w Sprawach Cywilnych. Tom XI. Część III [The EU area of freedom, security and justice. Judicial cooperation in civil cases]* (Instytut Wydawniczy EuroPrawo 2009) p. XI.3-172.

one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

2) an employer domiciled in a Member State may be sued: 1. in the courts of the Member State where he is domiciled; or 2. in another Member State: (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

3) an employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

4) the provisions of the Section regarding jurisdiction over individual contracts of employment of the Regulation (EC) No 44/2001 shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

5) the provisions of the Section regarding jurisdiction over individual contracts of employment of the Regulation (EC) No 44/2001 may be departed from only by an agreement on jurisdiction: 1. which is entered into after the dispute has arisen; or 2. which allows the employee to bring proceedings in courts other than those indicated in this Section of the Regulation (EC) No 44/2001.

As in regard to exclusive jurisdiction:

1) the following courts shall have exclusive jurisdiction, regardless of domicile:

a) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated; however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat; in order to determine that seat, the court shall apply its rules of private international law;

c) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

d) in proceedings concerned with the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place; without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;

e) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

As in regard to prorogation of jurisdiction:

1) if the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction; such jurisdiction shall be exclusive unless the parties have agreed otherwise; such an agreement conferring jurisdiction shall be either: (a) in writing or evidenced in writing; or (b) in a form which accords with practices which the parties have established between themselves; or (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2) any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".

3) where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

4) the court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5) agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21 of the Regulation (EC) No 44/2001, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22 of the Regulation (EC) No 44/2001.

6) apart from jurisdiction derived from other provisions of the Regulation (EC) No 44/2001, a court of a Member State before which a defendant enters an appearance shall have jurisdiction; this rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22 of the Regulation (EC) No 44/2001.

The domestic jurisdiction shall be established according to foregoing rules, the competence of the courts in Poland shall be regulated by the general rules applied to any proceedings. There is no special rules concerning jurisdiction in cases of European order for payment, also there is no one central competent court. The rules to be applied are as follows:

According to Art. 505<sup>16</sup>(1) of the Code of Civil Procedure of 17 November 1964 (CCP) the competent courts are: district and regional courts. Their local and substantive jurisdiction is defined in the Code (substantive - art. 16, 17, 461(1)1, local – art. 27-46, 461(1)1). It was inexpedient to depart the rules concerning the substantive jurisdiction provided in CCP, that is why methods of determination of jurisdiction over cases of the European order for payment are taken from the general rules of civil procedure. Another reason was to eradicate necessity to transfer the cases according to jurisdiction when the opposition to the order was submitted which caused application of national procedure (also regarding jurisdiction).<sup>36</sup>

Rules regarding substantive jurisdiction:

- 1) district courts have jurisdiction in all civil cases (in the first instance) with the exception of cases reserved to regional courts (art. 16).
- 2) the regional courts are competent in cases of:
  - a) non-material rights (such as divorce) and related claims other than the following: establishment or contestation of a child's parentage, renunciation of parenthood or dissolution of adoption;
  - b) protection of copyright and related rights and rights concerning inventions, utility models, designs, trademarks, geographical indications and topographies of integrated circuits, protection of other rights involving intangible goods;
  - c) claims under the Press Act;

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<sup>36</sup> K. Jasińska, A. Lejko, 'Komentarz do art. 505(16) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(16) of the Code of civil procedure (Dz.U.64.43.296)], in K. Jasińska, A. Lejko, Komentarz do ustawy z dnia 5 grudnia 2008 r. o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U.08.234.1571), w zakresie zmian do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Dz.U.64.43.296) [Commentary to the act of 5 December 2008 about amendments to the Code of civil procedure and some other acts (Dz.U.08.234.1571) in the scope of the amendments to the act of 17 November 1964 – the Code of civil procedure], Komentarz LEX/el. 2009.

- d) property rights where the value of the disputed item is more than PLN 75 000, and PLN 100 000 in business proceedings, except in cases concerning: alimony, ownership disputes, liquidation of matrimonial property between spouses, alignment of the contents of the land register with the law as it stands;
- e) the issue of a ruling replacing a resolution on the division of a cooperative;
- f) the annulment, declaration of invalidity or establishment of the null and void status of resolutions issued by legal persons or by organisations which are not legal persons but which have been granted legal personality by law;
- g) the prevention of, and measures to eradicate, unfair competition;
- h) compensation for a damage caused by final unconstitutional judgment (art. 17).
- i) the district courts are competent in cases involving the recognition and confirmation of the enforceability of judgments handed down by foreign courts; according to art. 1148<sup>1</sup> in cases of the recognition the competent one is: the court which could be competent in the case decided by a foreign court or the one in which district a regional court having local jurisdiction is situated, when lack of the grounds – Warsaw district court, under art. 1151<sup>1</sup> in cases of confirmation of the enforceability of judgments handed down by foreign courts – the court competent according to domicile or business office of the debtor, when lack of this court – according to the place (district) where an execution has to take place.
- j) in cases regarding labour law both kinds of courts can be competent, district courts according to general jurisdiction rules or to the place where work is, has been or is to be carried out, eventually to the place (district) where the working place is situated; regional courts are competent, regardless the value of the object of the dispute, in cases concerning establishment of existence of the labour relation, recognition of ineffectiveness of labour agreement denunciation, restitution to work or restitution of previous terms of work or pay and also claims jointly enforced, and compensation in cases of unjustified or law-breaking notice and termination of labour relation, also cases regarding nominal fines and reference and also claims connected with them (art. 461 (1) and (1<sup>1</sup>)).

Rules regarding local jurisdiction:

I. Of 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 (seat) – art. 30.

II. 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:

1) the petitioner can institute proceedings in the court with general jurisdiction or in the other court indicated:

a) the court with jurisdiction over the domicile of the plaintiff (maintenance claims, establishment of paternity and related claims);

b) the court with jurisdiction over the place in which the defendant's establishment or business is located (if the claim is connected to the activities carried out by that establishment or business property claims connected to the defendant's business activities);

c) the court with jurisdiction over the place of performance of the disputed contract (actions to establish the existence of a contract or to have it performed, annulled or declared null and void and actions for damages for non-performance or improper performance of a contract); in the event of any doubts arising, documentary evidence should be provided of the place of performance of the contract;

d) the court with jurisdiction over the place where the harmful event occurred (claims arising out of a tort/delict);

e) the court with jurisdiction over the place where the legal representative handled the case in question (claims for payment of case fees);

f) the court with jurisdiction over the place where the real estate is located (claims relating to the rental or lease of real estate);

g) the court with jurisdiction over the place of payment (actions against the issuer of a bill or cheque); several issuers of a bill or cheque can be arraigned jointly before the court with jurisdiction over the place of payment or before the court with general jurisdiction for the drawee or the issue of promissory notes or cheques;

h) the court with jurisdiction over the place of performance of the contract (actions to conclude, establish the contents of or amend a contract, heard in separate proceedings in cases involving business law) – according to art. 479, read in conjunction with art. 34 of CCP;

i) the court with jurisdiction over the place where the work is, has been or is to be carried out, or before the court with jurisdiction over the place where the workplace in question is located (actions pertaining to labour law) - according to above mentioned art. 461(1) of CCP.

III. Of 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.

IV. 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.

According to the provision of art. 26 of the Regulation No. 1896/2006, all procedural issues not specifically dealt with in the Regulation shall be governed by national law – also examination of local jurisdiction. Under the Polish rules a problem with time limits may occur when the plaintiff having domicile in Poland will sue a person who has no domicile in Poland and has never resided in Poland. The local jurisdiction will be examined each time by the Supreme Court in incidental proceedings, which probably makes issuance of the order for payment in 30 days from the day of lodging the claim impossible.<sup>37</sup>

### 3.2

A. Applications for the European order for payment and other procedural documents may be submitted only in writing, documents may be lodged with the competent court either in person or by post. So, there is no specific electronic system serving the purposes of the Regulation No 1896/2006.

B. The language accepted under Article 21(2)(b) is Polish.<sup>38</sup>

C. According to art 128 of CCP, anyone making any written statement of claim or defence in a court action should enclose its copies and copies of the attachments to it for every participant of the case, and also for the court, if the originals of the attachments have not been previously placed in the court files.

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<sup>37</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art.505(16) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(16) of the Code of civil procedure (Dz.U.64.43.2960), Komentarz LEX/el. 2011.

<sup>38</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_communicationshtml\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_pl_en.htm) visited 15 August 2011.

D. Under Art. 266 and 304 of CCP a court before hearing a witness or a party informs him about his right to refusal to give evidence and cautions about criminal responsibility for false statements. In 2008, when CCP has been amended, the idea of introduction of additional sanctions for the plaintiff making false statement in the petition has been abandoned. In the exceptional situations art. 103 of CCP could be applied. According to it, the court may oblige him to reimburse the costs emerged because of his unreliable and obviously wrong behaviour.<sup>39</sup> According to art. 233 of the Polish penal code, a person making false statement bears criminal responsibility, if previously advised of it or made a statement under oath, such a person is liable to penalty up to 3 years of imprisonment.<sup>40</sup> The authorisation to inform about criminal responsibility for it has to result from the legal act being also a source of the conducted procedure.<sup>41</sup> The aim of protection under art. 233 is widely understood interest of the administration of justice, especially the value which is the assurance of credibility of establishments in the court proceedings and following it – the protection of the aptness of the issued judgments.<sup>42</sup> The penal provisions differentiate the significance of the information about right to refusal to give evidence and the caution about criminal responsibility for false statements, the latter one is the condition of criminal responsibility, while the lack of the first one abates the punishability.<sup>43</sup> The false statements have to be objectively and subjectively untrue, it is always the intentional offence.<sup>44</sup>

### 3.3.

A. Both a judge and a court clerk are competent to issue the order of payment, the court clerk is authorised to issue orders.<sup>45</sup> The rule corresponds with the aims of the Regulation No 1896/2006 presented in the preamble and rules providing that the case may be examined by person not being a judge (point 16 of the preamble: the examination should not need to be carried out by a judge), also providing that a court means any authority in a Member State with competence regarding European orders for payment or any other related matters (art.

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<sup>39</sup> K. Jasińska, A. Lejko, 'Komentarz do art. 505(18) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(18) of the Code of civil procedure (Dz.U.64.43.2960)] in Jasińska, Lejko supra n. 43.

<sup>40</sup> Act of 6th of June 1997, Dz. U. [Journal of Laws] 1997 No. 88, item 553, as amended.

<sup>41</sup> Sąd Najwyższy [Supreme Court] 18 May 2009, IV KK 459/08, OSNKW 2009/9/75, Biuletyn Sądu Najwyższego 2009/9/16.

<sup>42</sup> Sąd Najwyższy [Supreme Court] 1 April 2005, IV KK 42/05, OSNKW 2005/7-8/66, Biuletyn Sądu Najwyższego 2005/7/21.

<sup>43</sup> Sąd Najwyższy [Supreme Court] 3 June 2002, III KKN 342/99, LEX Nr. 53902, Prokuratura i Prawo 2003/5/2.

<sup>44</sup> A. Marek, 'Komentarz do art. 233 kodeksu karnego (Dz.U.97.88.553)' [Commentary to art. 233 of the Penal Code (Dz.U.97.88.553)], in A. Marek, Kodeks karny. Komentarz (LEX 2010) [Penal Code. Commentary] Komentarz LEX 2010.

<sup>45</sup> Art. 505<sup>16</sup>(2), (3) of CCP.

5(3)).<sup>46</sup> It also results from limited cognition of the organ issuing the orders of payments.<sup>47</sup> Two kinds of judgment may be pronounced: the European orders for payment and orders (judgments) regarding rejection of the application – the court clerk may deal with both of them<sup>48</sup> and generally with all actions in a form of the order, prescribed by the Regulation No 1896/2006 and national rules (for instance the court summons to pay the fee for lodging the claim)<sup>49</sup>.

The case is investigated at chamber(s)<sup>50</sup>, without a trial or even the necessity to provide the court sessions<sup>51</sup>. This method of examination is applied to procedure ending by the issuance of the European order for payment, but also the order regarding remission of the proceedings, when plaintiff requests it in a case of lodging the statement of opposition and the order annulling the European order for payment.<sup>52</sup>

The examination of the petition is the mostly formal, because relevance of the claim is examined as much as a court may exclude clearly unfounded claims or inadmissible applications.<sup>53</sup> Also in a case of inadmissibility of suing or prosecuting a court will reject the application<sup>54</sup> or will return it to the plaintiff when after an ineffective deadline for supplementation still it has been unpaid<sup>55</sup>. There is no definition or explanation of the term 'inadmissible application' in the Regulation No 1896/2006, which in fact may be treated as a sort of obstacle in its application. It seems to be justified to accept the idea that the inadmissibility is the result of lack of the fulfilment of the conditions prescribed in art. 2, 3, 4 and 6 of the Regulation No 1896/2006, which means that the court has to examine the petition in regard to seven issues (1) if it is the cross-border case, 2) if it is the case concerning civil and commercial matters, not excluded from the scope of application of the Regulation No

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<sup>46</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik supra n. 44.

<sup>47</sup> K. Jasińska, A. Lejko, 'Komentarz do art. 505(16) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(16) of the Code of civil procedure (Dz.U.64.43.2960)], in Jasińska, Lejko supra n. 43.

<sup>48</sup> Jasińska, Lejko supra n. 54.

<sup>49</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, 'Komentarz do art. 505(16) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(16) of the Code of civil procedure (Dz.U.64.43.2960)], in H. Dolecki, T. Wiśniewski, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, D. Zawistowski (eds.), Kodeks postępowania cywilnego. Komentarz. Tom II. Artykuły 367-505(37), [The Code of civil procedure. Commentary] LEX, 2010.

<sup>50</sup> Art. 505<sup>17</sup> of CCP.

<sup>51</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art.505(17) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(17) of the Code of civil procedure (Dz.U.64.43.2960)] Komentarz LEX/el. 2011.

<sup>52</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, Komentarz do art. 505(17) kodeksu postępowania cywilnego (Dz.U.64.43.296) [Commentary to art. 505(17) of the Code of civil procedure (Dz.U.64.43.2960)], in Dolecki, Wiśniewski, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Zawistowski supra n. 56.

<sup>53</sup> Wróbel supra n. 39, p. 458.

<sup>54</sup> Art. 199(1)1 of CCP.

<sup>55</sup> Art. 130(2) and (4) of CCP.

1896/2006, 3) if it is the pecuniary claim for a specific amount that have fallen due at the time when the application has been lodged, 4) if the court has the domestic jurisdiction over the case, 5) if the court has the competence to deal with the case, 6) if the petition complies with the formal requirements (Form A properly filled in) and 7) if the claim is clearly unfounded.<sup>56</sup> Because of lack of definition of uncontested claim, the examination is mostly based on statements from the petition, sustained by evidence. Although, according to the Form A attached to the Regulation No 1896/2006, there should be an evidence with its description provided by the plaintiff, the court is not authorised to call him to clear away the defects concerning both evidence and the description, because the Regulation No 1896/2006 does not specify what kind of evidence should be provided.<sup>57</sup> It is possible that the plaintiff will conceal the information about debtor's contestation of the claim, but the latter one can use the means safeguarding his rights during further procedure.<sup>58</sup>

If the order can be issued only in regard of part of claim and petitioner agrees, the rest of the claim is a subject of regular (based on other sources of law), proper procedure<sup>59</sup>. In cases provided by the Polish law courts adjudicate according to general provisions or to provisions of separate/special procedures (for instance for the business law cases), excluding provisions of command and injunction procedure.<sup>60</sup> When in the business law cases – a court determines fixed date obliging plaintiff to present all the statements sustained by evidence in written statement of claim in a court action under penalty of loss of right to refer to them during procedure, unless the plaintiff will prove that referring to them in proper time was impossible or that a need to refer to them appeared later. In this case further statements sustained by evidence should be presented within the time of two weeks from a day, when referring to them proved to be possible or when a need to refer to them appeared. The copy of the plea together with the copy of this statement is served on defendant.<sup>61</sup> The aim of the rule is to

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<sup>56</sup> J. Pisuliński, 'Orzeczenia sądu w europejskim postępowaniu nakazowym'[Court judgments in European order for payment procedure], *Europejski Przegląd Sądowy* 2009, Nr. 1, p. 4

<sup>57</sup> Look at preamble: (14) In that context, it should be compulsory for the plaintiff to include a description of evidence supporting the claim. For that purpose the application form should include as exhaustive a list as possible of types of evidence that are usually produced in support of pecuniary claims.

<sup>58</sup> Wróbel supra n. 39, p. 457-458.

<sup>59</sup> According to art. 193 of CCP.

<sup>60</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, 'Komentarz do art. 505(18) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(18) of the Code of civil procedure (Dz.U.64.43.2960)], in Dolecki, Wiśniewski, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Zawistowski supra n. 56.

<sup>61</sup> Art. 505<sup>18</sup> and 479<sup>12</sup>(1) of CCP.

protect the plaintiff against the consequences of the limitation and to avoid the objection of unconstitutional restriction of the right to the court.<sup>62</sup>

B. Because service with proof of receipt by the defendant and service without proof of receipt by the defendant are treated equally, the only reason why the first service cannot be provided is that the defendant's address is not known with certainty. The provisions describe the minimum standard for the member states to comply with, that is why some of Polish methods of service are not admissible (for instance leaving it in the files of the case or posting it up in the court).<sup>63</sup>

### 3.4.

In a case of lodging statement of opposition, the order for payment loses validity (it ceases to be in force by law) and a case is a subject of regular, proper procedure. In cases provided by the Polish law courts adjudicate according to provisions of separate/special procedures, excluding provisions of command and injunction procedure. When in business law cases – a court while informing the plaintiff that a statement of opposition was lodged, determines fixed date obliging him to present all the statements sustained by evidence in written statement of claim in a court action under penalty of loss of right to refer to them during procedure, unless the plaintiff will prove that referring to them in proper time was impossible or that a need to refer to them appeared later. In this case further statements sustained by evidence should be presented within the time of two weeks from a day, when referring to them proved to be possible or when a need to refer to them appeared. Serving the copy of this written statement on defendant, a court determines a fixed date obliging defendant to present all the statements sustained by evidence in written statement of claim in a court action under penalty of loss of right to refer to them during procedure, unless the defendant will prove that referring to them in proper time was impossible or that a need to refer to them appeared later. In this case further statements sustained by evidence should be presented within the time of two weeks from a day, when referring to them proved to be possible or when a need to refer to them appeared. The aim of the rule is to protect the party against the consequences of the limitation and to avoid the objection of unconstitutional restriction of the right to the court.<sup>64</sup>

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<sup>62</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art.505(18) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(18) of the Code of civil procedure (Dz.U.64.43.2960)]. Komentarz LEX/el. 2011.

<sup>63</sup> Wróbel supra n. 39, p. 443-444.

<sup>64</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik supra n. 69.

If the plaintiff, according to the provisions of law, requests end of procedure in a case of lodging the statement of opposition, a court remits proceedings in a case, dealing with costs as in a case of withdrawal of a claim.<sup>65</sup>

3.5.

Either the Regulation No 1896/2006 or the Polish rules complementary to it does not provide solution for situation when the opposition was lodged after the time limit for it had passed by. Under other Polish rules of command and injunction procedures, the court rejects the opposition.<sup>66</sup>

In absence of timely opposition (30 days plus an appropriate period of time to allow a statement to arrive) the court of origin may and shall ex officio declare the European order for payment enforceable. The declaration can be either issued by a judge or by a court clerk. The possibility of complaint against declaration is provided.<sup>67</sup> Lodging the complaint does not entail the loss of binding effect of the declaration.<sup>68</sup> The order to which the opposition has not been lodged or has not been timely lodged is recognised as final judgment of the court, the judgment possessing validity in law.<sup>69</sup>

3.6.

A. The protection of debtor takes the form of arrangements for rescheduling the time limit for submitting a statement of opposition to the European order for payment, which in the Polish civil procedure is governed by provisions regarding non compliance with time limits and arrangements for rescheduling.<sup>70</sup> Under these rules a letter with the application for rescheduling must be lodged with the court in which the proceedings were to take place no more than one week after the reason for non compliance with the time limit ceases to apply. This letter should set out the grounds for the application. The party should take procedural action when the application is lodged. Where the time limit has not been complied with and a period of one year has elapsed, rescheduling will be authorised only in special cases. In

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<sup>65</sup> Art. 505<sup>19</sup> of CCP.

<sup>66</sup> Art. 504(1) and 494(1) of CCP, also K. Jasińska Katarzyna, A. Lejko Aleksandra, 'Komentarz do art.505(19) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(19) of the Code of civil procedure (Dz.U.64.43.2960)], in Jasińska, Lejko supra n. 43.

<sup>67</sup> Art. 795<sup>6</sup>-795<sup>7</sup> of CCP.

<sup>68</sup> K. Jasińska Katarzyna, A. Lejko Aleksandra, Komentarz do art. 795(6) kodeksu postępowania cywilnego (Dz.U.64.43.296) [Commentary to art. 795(6) of the Code of civil procedure (Dz.U.64.43.2960)], in Jasińska, Lejko supra n. 43.

<sup>69</sup> According to art. 366 of CCP, see also in Jasińska, Lejko supra n. 46.

<sup>70</sup> Art. 167-172 of CCP.

principle, the fact of lodging an application for rescheduling does not cause proceedings, or enforcement of a judgment, to be suspended.<sup>71</sup>

B. With regard to Article 20(2) of the Regulation, the rules laid down in Article 505<sup>20</sup> of CCP apply. The application should meet the requirements of a reply brief and the grounds for annulling the European order for payment must be indicated. The competent court is the court which issued the order, or if it was issued by the court clerk – the court where the action has been instituted. Before annulling the European order for payment the court must hear the applicant or require him to make a statement in writing. An complaint to the court's decision concerning annulment of the order may be lodged.<sup>72</sup>

3.7.

Costs of procedure are all the costs connected with the procedure, if they are met in judgment ending the procedure, or as defined in CCP – costs indispensable to deliberately assert one's rights and deliberately defend.<sup>73</sup> They are mostly described in the Act of 28<sup>th</sup> of July 2005 on court fees<sup>74</sup>, but also regulated by many other legal acts, as: Act of 29<sup>th</sup> of August 1997 on court bailiffs and enforcement<sup>75</sup>, Act of 25<sup>th</sup> of November 2004 on sworn translators<sup>76</sup>, Act of 5<sup>th</sup> of July 2002 on the provision of legal services by foreign lawyers<sup>77</sup>, Decree of 26<sup>th</sup> of October 1950 on amounts due to witness, experts and parties<sup>78</sup>, Regulation of 18<sup>th</sup> of December 1975 on the costs of taking the evidence from expert opinions in court proceedings<sup>79</sup>, Regulation of 31<sup>st</sup> of October 1983 on remuneration of an expert (translator) in the area of sign language<sup>80</sup>, Regulation of 4<sup>th</sup> of July 1990 on the amount of compensation due to witnesses and parties in court proceedings<sup>81</sup>, Regulation of 28<sup>th</sup> of August 2002 on fees for legal counsel services<sup>82</sup>, Regulation of 28<sup>th</sup> of September 2002 on fees for advocate services<sup>83</sup>, Regulation of 28<sup>th</sup> of June 2004 on maximum rates of notary<sup>84</sup>, Regulation of 30<sup>th</sup> of

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<sup>71</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_communicationshtml\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_pl_en.htm) visited 20 August 2011.

<sup>72</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_communicationshtml\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_pl_en.htm) visited 20 August 2011.

<sup>73</sup> Art. 98(1) of CCP.

<sup>74</sup> Dz. U. [Journal of Laws] 2005 No. 167, item 1398, as amended.

<sup>75</sup> Dz. U. [Journal of Laws] 1997 No. 133, item 882, as amended.

<sup>76</sup> Dz. U. [Journal of Laws] 2004 No. 273, item 2702, as amended.

<sup>77</sup> Dz. U. [Journal of Laws] 2002 No. 126, item 1069, as amended.

<sup>78</sup> Dz. U. [Journal of Laws] 1950 No. 49, item 445, as amended.

<sup>79</sup> Dz. U. [Journal of Laws] 1975 No. 46, item 254, as amended.

<sup>80</sup> Dz. U. [Journal of Laws] 1983 No. 64, item 292, as amended.

<sup>81</sup> Dz. U. [Journal of Laws] 1990 No. 48, item 284, as amended.

<sup>82</sup> Dz. U. [Journal of Laws] 2002 No. 163, item 1349, as amended.

<sup>83</sup> Dz. U. [Journal of Laws] 2002 No. 163, item 1348, as amended.

<sup>84</sup> Dz. U. [Journal of Laws] 2004 No. 148, item 1564, as amended.

November 2005 on fees and remuneration for mediators in civil proceedings<sup>85</sup>, Regulation of 10<sup>th</sup> of March 2006 on fees for bailiff services for acts of non-execution<sup>86</sup> and also the Code of Civil Procedure. Besides the court fees (presented below), there are costs of personal appearance of a party in a court, costs of representation of a lawsuit and costs of participation of mediator. They will be charged only when a party, a proxy or a mediator will participate in the proceedings.<sup>87</sup> Under art. 25(2) of the Regulation No 1896/2006, court fees shall comprise fees and charges to be paid to the court, also should not include for example lawyers' fees or costs of service of documents by an entity other than a court (art. 26 of the preamble to the Regulation 1896/2006).

There are no special provisions regarding costs of this particular procedure, so the general rules established by the acts are applied. There is a general rule that a participant in the legal proceedings is obliged to pay the amount determined in legal acts before taking an action. A fee should be paid upon filing a pleading (petition, writ or any other letter). A failure to pay might lead to the return of a plea after an ineffective deadline for supplementation.<sup>88</sup> When it is a plea of a person having domicile or seat abroad without a representative in Poland, a court will determine the deadline not shorter than one month to discharge a fee.<sup>89</sup> The general rule comes from provision of CCP, providing that a court will not take any action concerning an unpaid writ (petition).<sup>90</sup> The costs of bringing an action to the court depend on the type of proceedings described in legal acts. The Act on court fees provides for fees and expenses. 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.<sup>91</sup> 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.<sup>92</sup> 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 petition to annul the European order of payment (not less than PLN 30)<sup>93</sup>.

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<sup>85</sup> Dz. U. [Journal of Laws] 2005 No. 239, item 2018.

<sup>86</sup> Dz. U. [Journal of Laws] 2006 No. 42, item 289.

<sup>87</sup> Knoppek supra n. 27, p. 275.

<sup>88</sup> [https://e-justice.europa.eu/attachments/cost\\_study\\_poland\\_en.pdf](https://e-justice.europa.eu/attachments/cost_study_poland_en.pdf) visited 30 August 2011.

<sup>89</sup> Art. 130(1<sup>1</sup>) of CCP.

<sup>90</sup> Art. 126<sup>2</sup> of CCP.

<sup>91</sup> Art. 11-21 and 77-78 of the Act on court fees.

<sup>92</sup> Knoppek supra n. 27, p. 275.

<sup>93</sup> Art. 19 and 20 of the Act on court fees.

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).<sup>94</sup> The permanent fee of PLN 100 is charged for petition in a case of European small claims procedure.<sup>95</sup>

In summary procedures the fee for petition is permanent, if there is an established value of the claim or value of the subject of a contract, and a fee in appeal from a judgment is PLN 30 (when a value of the subject of appeal is no more than PLN 2 000), PLN 100 (more than 2 000, no more than PLN 5 000), PLN 250 (from PLN 5 000 to 7 500), PLN 300 (more than PLN 7 500).<sup>96</sup>

The proportional fees depend on the value of the claim. They are collected in cases concerning material rights, are calculated by the plaintiff – there should be 5% of the value of the claim (2% in group actions), not less than PLN 30, no more than PLN 100 000. If the plaintiff is represented by legal counsel, advocate or patent agent and the proportional court fee has been calculated incorrectly, the claim should be returned by the court.<sup>97</sup> Basic fees are collected where no proportional, provisional, permanent fees are charged – it is always PLN 30. The provisional fees are discharged in cases concerning material rights when the value of the claim cannot be estimated at the moment of commencement of the legal proceedings. Amount of fees oscillates between PLN 30 and 1000 (100 and 10 000 in group actions). The final determination of court costs in a case is settled by the court in the final adjudication, so the final fees can have a character of the proportional fees, when the value of the claim has been estimated, or of the fees individually determined by the court. The amount of the individual fees depends on social significance and the extent of complication, but it is no more than PLN 5000. The clerical fees are collected in cases of specific court actions, but they are mainly based on necessity to receive money for issuing copies (PLN 1 per page) or certified copies of documents filed with the case files (PLN 6 per page, twice more if in foreign language).

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<sup>94</sup> Art. 24.

<sup>95</sup> Art. 27b.

<sup>96</sup> Art. 28.

<sup>97</sup> Art. 130<sup>2</sup> of CCP, also Górski *supra* n. 37, p. 35-36.

According to art. 25(1) of the Regulation 1896/2006, the combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State. According to the Polish rules, the method of charging fees for petitions in European order for payment procedure is the same as in the cases of petitions in the Polish order of payment proceeding, when the court is also authorised to issue an order for payment. The court fee for petition in European order for payment amounts to 5% of the value of the claim, not less than PLN 30 and no more than PLN 100 000. The court *ex officio* reimburses  $\frac{3}{4}$  of the fee charged for the petition, if the European order for payment become legally valid. The issue of reimbursement of the costs incurred by the parties is regulated by provision of art. 98 -110 of CCP. The general rule prescribed in art. 98 is that a party losing a lawsuit is obliged to reimburse on the opponent's request costs indispensable to deliberately assert his rights and deliberately defend.<sup>98</sup> There are no charges for the opposition to the European order for payment<sup>99</sup> and for the declaration of enforceability of the European order for payment (issued *ex officio*)<sup>100</sup>. The application to annul the European order for payment is charged half the fee of the petition for the European order for payment.<sup>101</sup>

3.8.

According to art. 1153<sup>4</sup> and 1153<sup>5</sup> of CCP, European order for payment issued by a court of other member state of EU, which enforceability was ascertained according to Regulation No 1896/2006, constitutes an title of execution and is enforced in Poland after an enforcement clause is enacted.

The district court of general jurisdiction over a debtor (or a district court situated in a district where an execution is to be levied, if the competence cannot be ascertained using the first method) is competent to enact the enforcement clause. It is a formal expression of a court's assessment if the title of execution is suitable for realization – the enactment is the consequence of procedure of the assessment of existence of legal possibility to issue an authorization for execution to a certain party against a party specified in the title of execution,

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<sup>98</sup> Jasińska, Lejko supra n. 46.

<sup>99</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art.505(19) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(18) of the Code of civil procedure (Dz.U.64.43.2960)] Komentarz LEX/el. 2011.

<sup>100</sup> Jasińska, Lejko supra n. 75.

<sup>101</sup> According to Art. 19(1) and 18 of the Act on court fees.

in a scope and form determined by the petitioner.<sup>102</sup> Although the procedure is usually started by a party's petition, it can also be made ex officio, as in cases of orders of payment. It should be enacted promptly after the order's validation,<sup>103</sup> which usually means three days. The next step is to start the execution addressing a petition to a court or a bailiff, according to art. 796(1) of CCP.

The language accepted under Article 21(2)(b) is Polish.

Regarding the refusal of enforcement prescribed in art. 22 of the Regulation 1896/2006, the debtor may request for it (submitting a claim) in whole or in the part. The refusal entails deprivation of executability of the title of execution. The court competent to examine the claim is the court having substantive jurisdiction, in which district the execution has been conducted, if it has not been levied yet – the court having general jurisdiction. The petition should include all the objections that the debtor could provide at this moment under penalty of loss of the right to make use of them during further proceedings.<sup>104</sup> The debtor may also request for the court to stay the enforcement proceedings under art. 755(1)((3)) of CCP.

The measures provided for in Article 23(a) – (c) of the Regulation No 1896/2006<sup>105</sup> are the same as prescribed in art. 820<sup>2</sup> of CCP. They are applied in proceedings concerning the provision of security by the court which has jurisdiction to hear the case in the first instance (the district or regional court). By way of exception, which means that the jurisdiction cannot be ascertained, the measures are applied by the regional court in which region the court's decision regarding the means has to be executed, or the regional court in Warsaw (if lack of grounds according to place of execution or when the execution is to be provided in various regions). The application concerning the provision of security submitted in the course of legal proceedings is examined by the court of the same instance in which the procedure is conducted (with an exemption of the Supreme Court, when the first instance court is to examine the case) – art. 734 of CCP. The measures provided for in Article 23(a) – (b) of the Regulation are applied, as a rule, by the bailiff, but the court is also authorised. In certain cases the competent body is the district court. The district court is competent only to stay

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<sup>102</sup> E. Marszałkowska-Krześ (ed.), *Postępowanie cywilne* [Civil procedure] (C.H.Beck 2008) p. 494.

<sup>103</sup> Art. 782 of CCP.

<sup>104</sup> Art. 840<sup>3</sup> and 843 of CCP and also J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, *Komentarz bieżący do art. 1153(7) kodeksu postępowania cywilnego* (Dz.U.64.43.296) [The current commentary to art. 1153(7) of the Code of civil procedure (Dz.U.64.43.2960) Komentarz LEX/el. 2011.

<sup>105</sup> The competent court in the Member State of enforcement may, upon application by the defendant: a) limit the enforcement proceedings to protective measures; or (b) make enforcement conditional on the provision of such security as it shall determine; or (c) under exceptional circumstances, stay the enforcement proceedings.

enforcement proceedings (Article 23(c) of the Regulation).<sup>106</sup> The rules of CCP have three features which seem to correspond with the Regulation No 1896/2006: final decision about the measures is made by the court, their application depends on debtor's application and the possibility to lodge a complaint to the decision is provided by the law.<sup>107</sup>

#### **IV. National small claims procedure**

##### 4.1.

The national small claims procedure in Poland is called the simplified procedure or the summary procedure (art. 505<sup>1</sup> – 505<sup>14</sup> of CCP) . The summary procedure is held 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 (in fact not more than PLN 75000.00). There was a public demand to institute this simplified procedure and it also reflects the European tendencies in this matter.<sup>108</sup> This procedure is only optional for the plaintiff. This procedure can be used also together with an order of payment procedure or the injunction procedure, cases related to labour law and social insurance and also to some business cases.

##### 4.2.

See point 2.2. All district courts are competent to apply this procedure in the first instance and the regional courts in the second instance.

##### 4.3.

According to art. 505<sup>2</sup> of CCP the petition, the reply to the petition, the objection to the judgement by default and the writing containing the motion as to evidence should be filed in a special, standardized forms, prepared by the Ministry of Justice in 2002. So – form is written. The electronic procedure can't be applied to this form o procedure – so far. If a party does not fulfil these requirements, it is asked to correct it in one week time (art. 130<sup>1</sup>). If the party doesn't do it, the writing is being returned and has no legal consequences. The representation by a lawyer is not mandatory. There is no support by a court clerk or help desk for the

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<sup>106</sup> Art. 755(1) ((3)) of CCP and also [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsauthorit\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_pl_en.htm) visited 21 August 2011.

<sup>107</sup> K. Jasińska Katarzyna, A. Lejko Aleksandra, Komentarz do art.505(20) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(20) of the Code of civil procedure (Dz.U.64.43.2960)], in Jasińska, Lejko supra n. 43.

<sup>108</sup> J. Gudowski, 'Postępowanie uproszczone' [Summary procedure], in: T. Ereciński (ed.), Kodeks postępowania cywilnego. Komentarz [The Code of Civil Procedure. Commentary], vol. 2, (LexisNexis 2009) p. 793-794.

introduction of a procedure. You may find instructions in the Internet on the official websites of the Ministry of Justice<sup>109</sup>.

#### 4.4.

There are certain important peculiarities in the summary procedure. According to art. 505<sup>3</sup> of CCP the rule is: one petition, one claim. The connection of claims is allowed only if they arise from the same contract or contracts of the same kind. If there are more claims in the petition, it is returned. In general you have to vindicate the whole claim, not a part of it. The change of the petition is not allowed. The counterclaim and the objection of deduction are admissible, if the claims can be recognized in the summarized procedure (i.e. monetary claims of value PLN 10000.00) – art. 505<sup>4</sup>. The facts, objections, motions as to evidence, which were not notified in the application or in the reply to the application or during the first hearing or in the objection to a judgement by default, can be recognized only when the party will prove that it couldn't notify them earlier or the need to notify them has arisen later. The plaintiff can notify new facts and motions as to evidence only in one week time after getting the writings from the defendant, i.e. the reply to the application, the objection to a judgement by default (art. 505<sup>5</sup> of CCP). The procedure of sending summons before a court is also accelerated. Perhaps one of the most controversial regulations is placed in art. 505<sup>6</sup> § 3 of CCP. According to it the court can adjudicate the sum of money different from demanded, if he decides that the exact sum of money is impossible to be identified.

If the court decides that the case is peculiarly complex or requires peculiar information, he will apply ordinary procedure.

#### 4.5.

There are exclusions and restrictions of the possibility to appeal against the judgement in the summary procedure. The appeal can be based only on two grounds (art. 505<sup>9</sup> § 1<sup>1</sup> of CCP):

- 1/ the infringement of substantive laws by its incorrect interpretation or improper application,
- or
- 2/ the infringement of the provisions of procedure if the inadvertences could have affected the outcome of the case.

It means that it can't be based on *de novis* grounds, on charges about facts or on charges about not considering the essence of the case.

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<sup>109</sup> <http://bip.ms.gov.pl/pl/formularze/formularze-pism-procesowych-w-postepowaniu-cywilnym/> visited 29 August 2011.

The appeal in the summary procedure is somehow similar to cassation. You should also remember that there is no plea of nullity (cassation) allowed in the summary procedure (art. 398<sup>2</sup> § 2 point 3 of CCP).

4.6.

The issue of reimbursement of the costs incurred by the parties is regulated by provision of art. 98 -110 of CCP. The general rule prescribed in art. 98 is that a party losing a lawsuit is obliged to reimburse on the opponent's request costs indispensable to deliberately assert his rights and deliberately defend.<sup>110</sup>

4.7.

The judgement in the summary procedure requires ordinary way of enforcement. Domestically the judgement is the title of execution and it needs in addition the executory formula (*fieri facias clause*). For enforcement abroad you should get the certificate of the European Enforcement Order (art. 795<sup>1</sup>-795<sup>5</sup> of CCP).

4.8.

They seem to be quite similar.

## **V. Implementation of Small Claims Regulation (861/2007) in Member States**

Rules of the Regulation No 861/2007 are supplemented by the Polish, national rules concerning civil procedure. The Code of Civil Procedure was amended by an act of 5th December, 2008 introducing some new regulations concerning European small claims procedure (art. 505<sup>21</sup>-505<sup>27</sup>), certificates (art. 795<sup>8</sup>-795<sup>9</sup>) and the enforceability of the judgments issued in European small claims procedure (art. 1153<sup>7</sup>-1153<sup>9</sup>).<sup>111</sup>

5.1.

As it comes out of the Form A (Claim Form) to the Regulation No 861/2007, the following rules of Regulation (EC) No 44/2001 are applied, which means in general that (remembering about the scope of application of the Regulation No 861/2007<sup>112</sup>):

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<sup>110</sup> Jasińska, Lejko supra n. 48.

<sup>111</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik supra n. 111.

<sup>112</sup> Art. 2. 1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*). 2. This Regulation shall not apply to matters concerning: (a) the status or legal capacity of natural persons; (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession; (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (d) social security; (e) arbitration; (f) employment law; (g) tenancies of immovable

- 1) person domiciled in a Member State shall, whatever his nationality, be sued in the courts of that Member State;
- 2) person who is not national of the Member State in which he is domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State;
- 3) person domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in sections regarding special jurisdiction, jurisdiction in matters relating to insurance, jurisdiction over consumer contracts, jurisdiction over individual contracts of employment, exclusive jurisdiction and prorogation of jurisdiction of the Regulation (EC) No 44/2001; in particular the rules of national jurisdiction set out in Annex I to the Regulation (EC) No 44/2001 shall not be applicable as against them.
- 4) if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 (exclusive jurisdiction) and 23 (prorogation of jurisdiction) of the Regulation (EC) No 44/2001, be determined by the law of that Member State; as against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I to the Regulation (EC) No 44/2001, in the same way as the nationals of that State.

As in regard to special jurisdiction:

- 1) a person domiciled in a Member State may, in another Member State, be sued:
  - a) in matters relating to a contract, in the courts for the place of performance of the obligation in question: for the purpose of the provision and unless otherwise agreed, the place of performance of the obligation in question shall be: in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered; in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
  - b) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
  - c) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

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property, with the exception of actions on monetary claims; or (h) violations of privacy and of rights relating to personality, including defamation.

d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

e) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

f) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

g) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question: (a) has been arrested to secure such payment, or (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

2) a person domiciled in a Member State may also be sued:

a) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

b) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

c) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

d) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

e) where by virtue of the Regulation (EC) No 44/2001 a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

As in regard to jurisdiction in matters relating to insurance:

- 1) an insurer domiciled in a Member State may be sued: (a) in the courts of the Member State where he is domiciled, or (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.
- 2) an insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
- 3) in respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred; the same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.
- 4) in respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured; articles 8, 9 and 10 of the Regulation (EC) No 44/2001 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted; if the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.
- 5) without prejudice to Article 11(3) of the Regulation (EC) No 44/2001, an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
- 6) the provisions of the Section concerning jurisdiction in matters relating to insurance of the Regulation (EC) No 44/2001 shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.
- 7) the provisions of the Section concerning jurisdiction in matters relating to insurance of the Regulation (EC) No 44/2001 may be departed from only by an agreement: a) which is entered into after the dispute has arisen, or b) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in the Section of the Regulation (EC) No 44/2001, or c) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or d) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is

compulsory or relates to immovable property in a Member State, or e) which relates to a contract of insurance in so far as it covers one or more of the following risks: 1. any loss of or damage to: (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes; (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; 2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage: (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks; (b) for loss or damage caused by goods in transit as described in point 1(b); 3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire; 4. any risk or interest connected with any of those referred to in points 1 to 3; 5. notwithstanding points 1 to 4, all "large risks" as defined in Council Directive 73/239/EEC(7), as amended by Council Directives 88/357/EEC(8) and 90/618/EEC(9), as they may be amended.

As in regard to jurisdiction over consumer contracts:

- 1) in matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001, without prejudice to Article 4 and point 5 of Article 5 of this Regulation, if: (a) it is a contract for the sale of goods on instalment credit terms; or (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.
- 2) where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.
- 3) the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001 shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

4) a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled; proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled; it shall not affect the right to bring a counter-claim in the court in which, in accordance with the Section regarding jurisdiction over consumer contracts of the Regulation (EC) No 44/2001, the original claim is pending.

5) the provisions of the section regarding jurisdiction over consumer contracts may be departed from only by an agreement: 1. which is entered into after the dispute has arisen; or 2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or 3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

As in regard to jurisdiction over individual contracts of employment:

1) where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

2) an employer domiciled in a Member State may be sued: 1. in the courts of the Member State where he is domiciled; or 2. in another Member State: (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

3) an employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

4) the provisions of the Section regarding jurisdiction over individual contracts of employment of the Regulation (EC) No 44/2001 shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

5) the provisions of the Section regarding jurisdiction over individual contracts of employment of the Regulation (EC) No 44/2001 may be departed from only by an agreement on jurisdiction: 1. which is entered into after the dispute has arisen; or 2. which allows the

employee to bring proceedings in courts other than those indicated in this Section of the Regulation (EC) No 44/2001.

As in regard to exclusive jurisdiction:

- 1) the following courts shall have exclusive jurisdiction, regardless of domicile:
  - a) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated; however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;
  - b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat; in order to determine that seat, the court shall apply its rules of private international law;
  - c) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;
  - d) in proceedings concerned with the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place; without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;
  - e) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

As in regard to prorogation of jurisdiction:

- 1) if the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction; such jurisdiction shall be exclusive unless the parties have agreed otherwise; such an agreement conferring jurisdiction shall be either: (a) in writing or

evidenced in writing; or (b) in a form which accords with practices which the parties have established between themselves; or (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2) any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".

3) where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

4) the court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5) agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21 of the Regulation (EC) No 44/2001, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22 of the Regulation (EC) No 44/2001.

6) apart from jurisdiction derived from other provisions of the Regulation (EC) No 44/2001, a court of a Member State before which a defendant enters an appearance shall have jurisdiction; this rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22 of the Regulation (EC) No 44/2001.

The domestic jurisdiction shall be established 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 cases of European small claims, also there is no one central competent court. The rules to be applied are as follows:

According to Art. 505<sup>22</sup>(1) of CCP, the competent courts are: district and regional courts. Their local and substantive jurisdiction is defined in the Code (substantive - art. 16, 17, local – art. 27-46). Which means that the district courts with local jurisdiction will mostly deal with cases of European small claims (because of the upper limit of the value of the claim), but the jurisdiction of the regional courts cannot be ruled out (for instance in cases regarding

protection of the copyrights)<sup>113</sup> – the information regarding competence of only district courts available on the page of European Judicial Atlas, although in fact it is inconsistent with the provision of above mentioned Art 55<sup>2</sup>(1) of CCP.<sup>114</sup>

5.2.

According to CCP only communication in writing is accepted in Poland.<sup>115</sup> Accepted language is Polish.<sup>116</sup>

5.3.

According to the provisions of the Regulation 861/2007, the judgment creates the national title, finishing the unified European procedure in a case.<sup>117</sup> The role of the national rules of procedure is supplementary:

A judgement in the European Small Claims Procedure may be rendered by the judge. The court clerk may issue orders<sup>118</sup>, which corresponds with point 27 of the preamble of the Regulation No 861/2007 (the court or tribunal must include a person qualified to serve as a judge in accordance with national law)<sup>119</sup>. In practice a scope of his activities is narrow – he is authorised to act only when this form of legal decision is prescribed by the law, which means – he investigates if the petition (claim) was properly paid (permanent fee of PLN 100) or decides about exemption from payment of court fees (costs)<sup>120</sup>, also, as it seems, the regulation of CCP, excuses the judges from the obligation to issue complex orders concerning request to complete the claim (Form B) and less complex orders regarding calling to answer the claim (Form C).<sup>121</sup>

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<sup>113</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, 'Komentarz do art. 505(22) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(22) of the Code of civil procedure (Dz.U.64.43.2960)], in Dolecki, Wiśniewski, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Zawistowski supra n. 56.

<sup>114</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art. 505(22) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 505(22) of the Code of civil procedure (Dz.U.64.43.2960)] Komentarz LEX/el. 2011.

<sup>115</sup> Art. 125(1), (2), read in conjunction with Art. 126(1), (2) and Art. 187(1).

<sup>116</sup> Art. 256 of CCP, read in conjunction with Art. 1147(2) of CCP and with Art. 4(1) of the Polish Language Act of 7th October 1999 (Dz. U. [Journal of Laws] 1999 No. 90, item 999), also compare: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_communicationshtml\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_communicationshtml_pl_en.htm) visited 15 August 2011.

<sup>117</sup> Sadowski, Taborowski supra n. 42, p. XI.3-202.

<sup>118</sup> According to art. 505<sup>22</sup>(2) of CCP.

<sup>119</sup> Dolecki, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Wiśniewski, Zawistowski supra n. 120.

<sup>120</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik supra n. 121.

<sup>121</sup> K. Jasińska Katarzyna, A. Lejko Aleksandra, Komentarz do art. 505(22) kodeksu postępowania cywilnego (Dz.U.64.43.296) [Commentary to art. 505(22) of the Code of civil procedure (Dz.U.64.43.2960)], in Jasińska, Lejko supra n. 43.

The case is investigated at chamber(s), the court is authorised to assign a trial in cases regulated by special procedures (for instance by Art. 5(1) of the Regulation No 861/2007)<sup>122</sup>, which means that the court is authorised to act *ex officio* or on application of one of the parties. The party's petition may be dismissed by the court decision with the reasons of the sentence. Complaint to the court decision is not provided.<sup>123</sup>

According to point 24 of the preamble to the Regulation No 861/2007, for the purposes of calculating time limits as provided for in the Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply. The methods of determination provided there and Polish methods are congruent, although there is one difference concerning determination of periods expressed in days – while according to the Regulation No 1182/71, where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day, Saturday is regarded as the working day in the Polish law. As a consequence of the difference, methods provided in the Regulation No 1182/71 are applied to determination of all periods foreseen in the Regulation No 861/2007, as to any others not provided in it – the Polish rules are applied (for instance time limits for appeals).<sup>124</sup>

According to art. 505<sup>24</sup> of CCP, if the provisions stipulate that a petition should be returned to the plaintiff, a court issues a decision concerning it. The problem with ending this part of procedure was that according to CCP, the reasons of returning the petition to the plaintiff influenced the ways the court decide and the consequences of decisions. Finally, the regulation provides that, the way to decide is a court decision (not a judgment or a decree) and its consequence as of decision finishing the case is possibility to lodge a complaint.<sup>125</sup>

If the court decides so, a witness gives sworn evidence in writing, within a fixed term also provided by the court. Sending the written statement from Polish public post office is treated equally as lodging it in the court.<sup>126</sup> Because of witness's unjustified absence, the court will put a fine on him and will call him again. In a case of another absence, the court will put

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<sup>122</sup> Art. 505<sup>23</sup> of CCP.

<sup>123</sup> Sadowski, Taborowski supra n. 42.

<sup>124</sup> K. Jasińska, A. Lejko, 'Komentarz do art.505(23) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(23) of the Code of civil procedure (Dz.U.64.43.296)], in Jasińska, Lejko supra n. 43.

<sup>125</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, 'Komentarz do art. 505(24) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(24) of the Code of civil procedure (Dz.U.64.43.296)], in Dolecki, Wiśniewski, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Zawistowski supra n. 56.

<sup>126</sup> Art. 165(2) of CCP.

another fine on the witness and may decide about compulsory bringing of him.<sup>127</sup> Because of his unjustified refusal to give evidence or to swear under the oath, the court at first hearing the parties present, regarding relevance of the refusal, will put a fine on him. Irrespective of the fine, the court may order to put an arrest on the witness, up to one week. The court will waive the arrest, if the witness will give the evidence or swear under the oath or if the case will be finished in the instance, where this evidence has been allowed.<sup>128</sup> Examination of the party may be also in writing, according to the court decision.<sup>129</sup> Previously examination of the parties and witnesses in writing was possible only when deaf or dumb, other possibility was limited by principles of directness and oral examination of cases by law courts.<sup>130</sup>

Judgment issued after the investigation at chamber(s) binds the court from the moment of signing of the sentencing part of it. In a case when the defendant has not timely produced the answer for the claim, the judgment by default may also be issued after the investigation at chamber(s). The court ex officio serves the judgment on both sides with instruction concerning possible remedies.<sup>131</sup> Reasons for the sentence are not required, time limit to apply for them starts from the date when the judgment has been served.<sup>132</sup>

#### 5.4.

Availability of appeal in any procedure in Poland is based on constitutional norm of Art. 176(1) providing that court proceedings shall have at least two stages.<sup>133</sup> When the conditions defined in Article 7(2) of the Regulation are met, the court issues the judgment, which is subject to appeal by the party in the second instance court (the regional court or the court of appeal). The appeal shall be lodged with the court which issued the contested judgment (the court of the first instance: the district court or the regional court). The time limit is two weeks from the moment when the judgment with reasons for the sentence has been served. If a party did not apply for the reasons for the sentence in one week's time from the moment when the verdict has been given. When the conditions defined in Article 7(3) of the Regulation are met, the court hands down a judgment by default. The defendant may raise objections to the judgment by default by way of an appeal to be lodged with the court which handed down the judgment by default. In the event of an unfavourable decision, the plaintiff may lodge an

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<sup>127</sup> Art. 274(1) of CCP.

<sup>128</sup> Art. 276 of CCP.

<sup>129</sup> Art. 505<sup>25</sup> of CCP.

<sup>130</sup> Sąd Najwyższy [Supreme Court] 6 June 1957, I CR 743/56, OSN 1959, Nr. 3, item 70 and Sąd Najwyższy [Supreme Court] 27 October 1960, 3 CR 599/59, OSN 1961, Nr. 1, item 23.

<sup>131</sup> Art. 505<sup>26</sup> and 479<sup>18</sup>(2) of CCP.

<sup>132</sup> Art. 328(1) of CCP.

<sup>133</sup> The Constitution of the Republic of Poland of 2nd April, 1997, Dz. U. [Journal of Laws] 1997 No. 78, item 483.

appeal under the general rules. Reasons for the sentence are provided when the action has been dismissed in the whole or in the part and the plaintiff has requested them in one week's time from the moment when the judgment has been served to him or he has lodged the appeal in the proper time, previously not applying for the reasons for the sentence.<sup>134</sup> The appeal can be based on a charge of: 1) infringement of material law by improper interpretation or wrong application, 2) infringement of the law of process, if it could influence the result of the case. After the term to appeal has elapsed, adducing further objections is inadmissible.<sup>135</sup> The court adjudicates the case in a bench composed of one judge, it may be investigated at chamber(s) unless a party in appeal or answer to appeal has requested the trial.<sup>136</sup> The court could investigate it at chamber(s), even if the defence raised in the appeal was evidently groundless, until this rule was questioned as unconstitutional by the Polish Constitutional Court.<sup>137</sup> The actions of a court of appeal are limited, they mostly come down to supervisory function.<sup>138</sup> The court of the second instance does not conduct the hearing of evidence with the exception of the documentary proof, unless the appeal was based on the circumstances or on the evidence discovered later and not possible to use before the first instance court.<sup>139</sup> If the second instance court discovers the infringement of material law and the evidence does not constitute the sufficient bases to change in the judgment, the court overrules it and transfers the case for re-examination. The court also dismisses the appeal, when in spite of the infringement of material or procedural law or erroneous justification, the judgment is compatible with law.<sup>140</sup> The second instance court ex officio issues the reasons of the sentence only to the judgment annulling the appealed judgment and transferring the case to the first instance court to re-examination. The reasons of the sentence is also issued on a party's application submitted in one week's time from the moment when the verdict has been given or has been served to the party, if it has not been given (also in a case of complaint). If there was no hearing of evidence in the second instance, the reasons of the sentence should only explain the legal basis of the judgment with the citation of the provisions of law. The court of

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[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsappeal\\_en.jsp?countrySession=23&#statePage0](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_en.jsp?countrySession=23&#statePage0) visited 15 August 2011. According to provisions of Articles 339(1), 342, 344(1), 316(1), 367(1), (2) read in conjunction with Article 369 of CCP.

<sup>135</sup> Art. 505<sup>9</sup> of CCP.

<sup>136</sup> Art. 505<sup>10</sup> of CCP.

<sup>137</sup> Trybunał Konstytucyjny [Constitutional Court] Dz. U. [Journal of Laws] 2006 Nr. 186, item 1379, see also Sadowski, Taborowski supra n. 42, p. XI.3-225.

<sup>138</sup> K. Jasińska, A. Lejko, 'Komentarz do art. 505(27) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(27) of the Code of civil procedure (Dz.U.64.43.296)], in Jasińska, Lejko supra n. 43.

<sup>139</sup> Art. 505<sup>11</sup> of CCP.

<sup>140</sup> Art. 505<sup>12</sup> (1), (3) of CCP.

the second instance, annulling the appealed judgment, passes the case to adjudicate excluding the provisions of separate procedures.<sup>141</sup>

In a case of ascertainment of existence of provided in separate procedure provisions grounds for annulment of the judgment, the court which has issued it, annuls it, on defendant's application. The application should comply with the conditions of the written statement of claim or defence in a court action and indicate circumstances justifying the annulment of the judgment. The court may investigate it at chamber(s), hearing the defendant or requesting his statement in writing before the annulment. The court decision finishes the case, the possibility to lodge a complaint is provided.<sup>142</sup> The second instance court annulling the appealed judgment transfers the case to examination, excluding the provisions of separate procedures,<sup>143</sup> which means that it should be re-examined according to the general rules of civil procedure.<sup>144</sup>

#### 5.5.

The court that has issued the judgment in the case of European small claims, also issues the certificate prescribed in the Regulation No 861/2007 – according to conditions also prescribed in the Regulation. The court acts on application of the creditor. The court decision may also be issued by the court clerk, lodging a complaint is provided by the Polish law.<sup>145</sup> The debtor is not vested either with the opportunity to file any complaint against recognition of the judgment or with possibility to apply any means of appeal in the Member State of origin. The only way to avoid the execution of the judgment is application of the mechanism prescribed in art. 22 of the Regulation 861/2007 regarding the refusal of enforcement.<sup>146</sup>

The review of the judgment is permissible in two situations. In both of them putting down the blame to defendant eliminates possibility to lodge the petition or to achieve the positive effect of the petition lodged. Although from the point of view of the minimum standards from the Regulation No 861/2007, service of documents might be effected and successful, but there are some doubts connected with the effect of service, its time and the guilt of the defendant. For

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<sup>141</sup> Art. 505<sup>13</sup> of CCP.

<sup>142</sup> Art. 505<sup>27a</sup> of CCP.

<sup>143</sup> Art. 505<sup>27</sup> of CCP.

<sup>144</sup> H. Dolecki, J. Iwulski, G. Jędrejek, I. Koper, G. Misiurek, P. Pogonowski, T. Wiśniewski, D. Zawistowski, 'Komentarz do art. 505(27) kodeksu postępowania cywilnego (Dz.U.64.43.296)' [Commentary to art. 505(27) of the Code of civil procedure (Dz.U.64.43.2960)], in Dolecki, Wiśniewski, Iwulski, Jędrejek, Koper, Misiurek, Pogonowski, Zawistowski supra n. 56.

<sup>145</sup> Art. 795<sup>8</sup> and 795<sup>9</sup> of CCP.

<sup>146</sup> J. Zatorska, Komentarz do art. 20 rozporządzenia Parlamentu Europejskiego i Rady (WE) nr 861/2007 ustanawiającego europejskie postępowanie w sprawie drobnych roszczeń (Dz.U.U.E.L.07.199.1) [Commentary to art. 20 of the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (Official Journal L 199, 31/07/2007 P. 0001)] Komentarz LEX/el. 2009.

instance when the claim form or the summons to an oral hearing was served by a method without proof of receipt by him personally (for instance by the deposit of the document in the debtor's mailbox) and the court, as in Poland, is not obliged to verify the debtor's address made known by the plaintiff.<sup>147</sup> Even if the letter was served on debtor, the question is if he had enough time to prepare to defence. The date when he had received it is unknown and the estimation of the necessary time to prepare to defence is even more difficult, because it depends from the complexity of the case.<sup>148</sup> As to the guilt, the service by the method without proof of receipt is provided irrespective of the circumstances connected with defendant's guilt.<sup>149</sup>

The protection of debtor in the Polish law takes the form of arrangements for rescheduling the time limit for submitting a petition to review the judgment, which is governed by provisions regarding non compliance with time limits and arrangements for rescheduling.<sup>150</sup> Under these rules a letter with the application for rescheduling must be lodged with the court in which the proceedings were to take place no more than one week after the reason for non compliance with the time limit ceases to apply, which is treated as a formal impediment of the application<sup>151</sup>. The possibility of requesting the rescheduling is also based on the concept of lack of guilt of the petitioner, according to art. 168 of CCP. It is justified to say about such a situation when there is a cause of non compliance – the debtor's action is objectively impossible, with his due diligence.<sup>152</sup> In every case concerning lack of guilt, the requirement of due diligence of a man concerned for his important, vital issues should be assessed, together with any other circumstances of the case.<sup>153</sup> This letter should set out the grounds for the application. The party should take procedural action when the application is lodged. Where the time limit has not been complied with and a period of one year has elapsed, rescheduling will be authorised only in special cases. In principle, the fact of lodging an application for rescheduling does not cause proceedings, or enforcement of a judgment, to be

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<sup>147</sup> J. Zatorska, Komentarz do art.18 rozporządzenia Parlamentu Europejskiego i Rady (WE) nr 861/2007 ustanawiającego europejskie postępowanie w sprawie drobnych roszczeń (Dz.U.UE.L.07.199.1) [Commentary to art. 18 of the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (Official Journal L 199, 31/07/2007 P. 0001)] Komentarz LEX/el. 2009.

<sup>148</sup> J. Gołaczyński, Współpraca sądowa w sprawach cywilnych i handlowych w Unii Europejskiej [Judicial cooperation in civil and commercial matters in European Union] (Wolters Kluwer 2007) p. 65.

<sup>149</sup> Zatorska supra n. 154.

<sup>150</sup> Art. 167-172 of CCP.

<sup>151</sup> Sąd Najwyższy [Supreme Court] 14 April 2010, III SZ 1/10, LEX Nr. 602071.

<sup>152</sup> Sąd Najwyższy [Supreme Court] 16 February 2011, II CZ 209/10, LEX Nr. 738553.

<sup>153</sup> Sąd Najwyższy [Supreme Court] 8 October 2010, II PK 70/10, LEX Nr. 687017, Sąd Najwyższy [Supreme Court] 26 April 2007, III CZ 22/07, LEX Nr. 319631.

suspended<sup>154</sup>, it does not *ex lege* cease the validity of the judgment – the judgment of the court is required<sup>155</sup>. The examination of the letter takes place during the incidental proceedings.<sup>156</sup>

Additionally, art. 14 of the Regulation 861/2007 regards all the issues connected with time limits, inter alia the parties should be informed of the consequences of not complying with the time limits set by the courts. The necessary prerequisite of the activity defending the rights of the party is the knowledge about the time limits of the necessary actions.<sup>157</sup>

The defendant who applied for the review of the judgment may also make a request to stay or limitation of enforcement in the Member State of enforcement.<sup>158</sup>

5.6.

See point 3.7. According to one the aims of the Regulation No 861/2007, the cost should be minimalised – so the generation of expenses should be also seldom.<sup>159</sup>

5.7.

According to art. 1153<sup>7</sup> of CCP, judgment in the European Small Claims issued by a court of other member state of EU and with certificate prescribed in the Regulation No 861/2007 constitutes an title of execution and is enforced in Poland after an enforcement clause is enacted. This kind of judgment is treated in Poland as the Polish titles of execution, hence the necessity to issue the enforcement clause in order to levy the execution.<sup>160</sup> The district court of general jurisdiction over a debtor (or a district court situated in a district where an execution is to be levied, if the competence cannot be ascertained using the first method) is competent to enact the enforcement clause.<sup>161</sup> The lack of possibility to ascertain the general local jurisdiction over the debtor, which means for instance that the debtor has no domicile or seat in Poland.<sup>162</sup> A person requesting the clause to be issued is obliged to produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity and

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<sup>154</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_communicationshtml\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_pl_en.htm) visited 14 August 2011.

<sup>155</sup> J. Pisuliński, 'Europejski nakaz zapłaty' [European order for payment] Europejski Przegląd Sądowy 2008, Nr. 1, p.12.

<sup>156</sup> Sąd Najwyższy [Supreme Court] 10 January 2008, IV CZ 110/07, LEX Nr. 621784.

<sup>157</sup> Weitz supra n. 38, 2009, s. 225.

<sup>158</sup> Zatorska supra n. 154.

<sup>159</sup> K. Gonera, Komentarz do ustawy o kosztach sądowych w sprawach cywilnych [Commentary to the Act on court fees in civil cases] (LexisNexis 2006) p. 68.

<sup>160</sup> J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz bieżący do art.1153(7) kodeksu postępowania cywilnego (Dz.U.64.43.296) [The current commentary to art. 1153(7) of the Code of civil procedure (Dz.U.64.43.296)] Komentarz LEX/el. 2011.

<sup>161</sup> Art. 1153<sup>8</sup> of CCP.

<sup>162</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik Supra n. 167.

authenticated Polish translation of the certificate.<sup>163</sup> In Poland, as in any other Member State, there is no obligation to accept the certificate in any other language than the official one.<sup>164</sup> Authenticated translation means in Poland the translation made by the sworn translator, according to the Act of 25<sup>th</sup> of November 2004 on sworn translators.<sup>165</sup>

It is a formal expression of a court's assessment if the title of execution is suitable for realization – the enactment is the consequence of procedure of the assessment of existence of legal possibility to issue an authorization for execution to a certain party against a party specified in the title of execution, in a scope and form determined by the petitioner.<sup>166</sup> Although the procedure is usually started by a party's petition, it can also be made *ex officio*, as in cases of orders of payment. It should be enacted promptly after the order's validation,<sup>167</sup> which usually means three days. The next step is to start the execution addressing a petition to a court or a bailiff, according to art. 796(1) of CCP.

Regarding the refusal of enforcement prescribed in art. 22 of the Regulation 861/2007, the debtor may request for it (submitting a claim) in whole or in the part. The refusal entails deprivation of executability of the title of execution. The court competent to examine the claim is the court having substantive jurisdiction, in which district the execution has been conducted, if it has not been levied yet – the court having general jurisdiction. The petition should include all the objections that the debtor could provide at this moment under) penalty of loss of the right to make use of them during further proceedings.<sup>168</sup>

The measures provided for in Article 23(a) – (c) of the Regulation No 861/2007 are applied in proceedings concerning the provision of security by the court which has jurisdiction to hear the case in the first instance (the district or regional court). By way of exception, which means that the jurisdiction cannot be ascertained, the measures are applied by the regional court in which region the court's decision regarding the means has to be executed, or the regional court in Warsaw (if lack of grounds according to place of execution or when the execution is to be provided in various regions). The application concerning the provision of security submitted in the course of legal proceedings is examined by the court of the same instance in which the procedure is conducted (with an exemption of the Supreme Court, when the first

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<sup>163</sup> Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik *Supra* n. 167.

<sup>164</sup> Zatorska *supra* n. 153.

<sup>165</sup> Dz. U. [Journal of Laws] 2004 No. 273, item 2702, as amended.

<sup>166</sup> Marszałkowska-Krześ *supra* n. 109, p. 494.

<sup>167</sup> Art. 782 of CCP.

<sup>168</sup> Art. 840<sup>3</sup> and 843 of CCP and also Bodio, Demendecki, Jakubecki, Marcewicz, Telenga, Wójcik *supra* n. 167.

instance court is to examine the case). The measures provided for in Article 23(a) – (b) of the Regulation are applied, as a rule, by the bailiff. In certain cases the competent body is the district court. The district court is competent only to stay enforcement proceedings (Article 23(c) of the Regulation).<sup>169</sup>

## VI. Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

### 6.1.

Both Regulations set the unified standard of procedure in two kinds of various situations. Although situations are different, the rules applied in the Regulations are often similar. The question is if they really create the unified rules, which also make the civil procedure similar? There are a lot of issues to be underlined as good and bad examples of changes toward simplicity, speeding up and reduction of the costs:

- 1) regarding the European order for payment procedure:
  - a) Although there are very modern regulations concerning means of communication, service of documents and video conferences, very often they all are very traditional (which usually mean slow) – example: means of communication declared by Poland (in writing, no computer system, although discussed).
  - b) 30 days seems not so fast for speedy procedure of issuance the order for payment, also there are no rules dealing with consequences of the infringement of a term by the court.
  - c) The court in the Member State of origin issuing the order and serving it on the defendant is not obliged to order/prepare its translation – the defendant may receive it in a language which he does not understand, what gives him a possibility to refuse to accept a document either at once, or send it back in one week's time, according to art. 8 of the Regulation 1393/2007.
  - d) Who has to instruct the parties about the above right – the court issuing the order?<sup>170</sup>
  - e) There is no place in the forms to put information concerning *res iudicata*, pendency of the litigation, also - irregularity concerning the way of lodging the claim.
  - f) Lack of consistency between form A and E, it is possible to set up several claims (there are four boxes to put the information in Form A) – unfortunately there is only one box

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<sup>169</sup> Art. 734, 739-742, 755(1) ((3)) of CCP and also [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsauthorit\\_pl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_pl_en.htm) visited 12 August 2011.

<sup>170</sup> Sadowski, Taborowski supra n. 42, p. XI.3-186

for the principal claim and one for the interest in Form E. Should it be more than one order than?

- g) Problems with summing up the interest (from what moment?) and with indication of the whole amount of the claim (interest on the day of issuance of the order, what about the period in between issuance and the day of payment – should it be indicated separately, claimed separately and paid separately?).
- h) Adjudication about the total cost – court fees and other expenses – makes it difficult to decide what part of them should be reimbursed (paid) to the legal representative (proxy).<sup>171</sup>
- i) It is an alternative way to deal with cases, it is always possible to benefit from the national procedures.
- j) Although there is no obligation to have legal, professional representative, there are doubts concerning possibility to ascertain the competence of the court according to the provisions of the Regulation 44/2001 without legal advice.
- k) The claims are uncontested – the consequences of the Regulation are limited (not too many cases).
- l) Easy method of debtor's defence – statement without necessity to introduce further explanation.
- m) The order is served on the defendant; the information regarding his address is given by the plaintiff, which means that it might be incorrect.
- n) The fact of lack of service of documents, lack of proper language used in documents should be brought to the court of the Member State of origin, not of execution.
- o) The more requirements regarding inspection of the claim (petition), the less possibility to introduce the system of automatic control made by the clerks, not judges and also central computer system inspecting the petitions.<sup>172</sup>
- p) The plaintiff has the possibility to indicate the way of the court fee payment in the Form A; it does not have a practical sense - in a case when he indicates credit card payment or collection by the court from the bank account – because the only ways to pay the fees, according to the Polish law is to transfer the money to the court's bank account or to pay cash directly in the court cash-desk.<sup>173</sup>
- q) In the Form B, there is a please complete and/or rectify the attached application as indicated below as soon as possible and in any event by the specified date, which suggests

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<sup>171</sup> Pisuliński supra n. 63, p. 8-9.

<sup>172</sup> Jasińska, Lejko supra n. 46.

<sup>173</sup> Jasińska, Lejko supra n. 46.

necessity to indicate the date limiting the possibility to accomplish the court's request – this conclusion is unjustified.<sup>174</sup>

r) The possibility of ascertainment that the claim is clearly unfounded only according to the information given in the Form A is very limited; also it is unknown according to what law it should be clearly unfounded.<sup>175</sup>

s) Lack of the box in the Form B regarding calling the plaintiff to use the Form A to file the claim or calling him to pay the court fee.<sup>176</sup>

t) Information provided in the Form A may be insufficient if the parties are linked with each other by several similar legal relations, not precisely specified in the Form.<sup>177</sup>

u) The scope of the court's cognition was not precisely described as it goes to procedure concerning the issue of a European order for payment (for instance whether the court should take under consideration the impediments of rejection of the petition resulting from the Polish civil procedure?<sup>178</sup>

2) regarding the European small claims procedure:

a) The procedure is treated as the facultative to national simplified procedure regulated by art. 5051-50514 of CCP, when the value of the claim is less than PLN 10 000.

b) The procedure is possible to apply not only to cross-border cases, also to national relations – not in Poland.<sup>179</sup>

c) Lack of possibility to transfer the complicated case to the regular procedure, as it is possible in simplified procedure according to art. 5057 of CCP.

d) The Regulation obliges to translate only few documents, which makes the refusal to accept the document according to art. 8 of the Regulation 1393/2007, more often.

e) There is no Form applied to re-examination of the case.<sup>180</sup>

f) The payment of the adjudicated amount does not give possibility to refuse the execution of the judgment.

g) Autonomous regulation regarding languages – translation only when necessary (art. 6) Autonomous regulation of service of the documents.

h) Procedure is simplified, rules concerning jurisdiction are very complicated (taken from the Regulation No 44/2001).

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<sup>174</sup> Jasińska, Lejko supra n. 46.

<sup>175</sup> Pisuliński supra n. 63, p. 6.

<sup>176</sup> Pisuliński supra n. 162, p. 9.

<sup>177</sup> Pisuliński supra n. 63, p. 7-9.

<sup>178</sup> Pisuliński supra n. 162, p. 9.

<sup>179</sup> Sadowski, Taborowski supra n. 42, p. XI.3-203.

<sup>180</sup> Sadowski, Taborowski supra n. 42, p. XI.3-226.

- i) National differences concerning the remedies of the judgments.
- j) Lack of possibility to examine the judgment in the Member State of origin can lead to unjust situations.<sup>181</sup>
- k) Lack of cohesion in application of the Regulation – there are a lot of issues unregulated which results in application of the national complementary rules and makes the procedure less unified.<sup>182</sup>
- l) Reduction of costs of procedure connected with covering the distances in both procedures.<sup>183</sup>
- m) Creation of unified rules regarding examination of civil law cases in the certain categories of cases in both procedures.<sup>184</sup>
- n) Provisions of the Regulation do not provide any mean to discipline the court not complying with the time limits set by the Regulation.<sup>185</sup>
- o) Standardization (by Forms) of both procedures.<sup>186</sup>

## 6.2.

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. In the cross-border cases the national procedures make cause difficulties connected with the enforcement, which means that another European procedure should be applied. The national simplification procedures are constructed in this way that in fact they exclude applying them even if a defendant has a domicile abroad, even being the Polish

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<sup>181</sup> Sadowski, Taborowski supra n. 42, p. XI.3-233.

<sup>182</sup> T. Darkowski, Zniesienie sądowego stwierdzenia wykonalności sądowych orzeczeń zagranicznych we wspólnym obszarze sądowym – porównanie istniejących instrumentów [Abolition of exequatur in cases of foreign judgments in common judicial area – comparison of existing instruments], in Czapliński, Wróbel supra n. 37, p. 20, J. Świeca, Egzekucja i dochodzenie roszczeń na arenie międzynarodowej. Praktyczny poradnik [Execution and prosecution of claims in the international arena. Practical guide] (Oficyna wydawnicza Branta 2010) p. 91.

<sup>183</sup> Darkowski supra n. 189, p. 19.

<sup>184</sup> Weitz supra n. 38, p. 55.

<sup>185</sup> J. Zatorska, Komentarz do art. 14 rozporządzenia Parlamentu Europejskiego i Rady (WE) nr 861/2007 ustanawiającego europejskie postępowanie w sprawie drobnych roszczeń (Dz.U.UE.L.07.199.1) [Commentary to art. 14 of the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (Official Journal L 199, 31/07/2007 P. 0001)] Komentarz LEX/el. 2009.

<sup>186</sup> K. Weitz, 'Europejskie prawo procesowe cywilne – stan obecny i perspektywy dalszego rozwoju'[European civil procedural law – *status quo* and perspectives for the further development], Przegląd Sądowy 2007, Nr. 2, p. 21.

citizen who left Poland only for the short time. In fact it means that you should use EU regulations and if the defendant is not the EU citizen, you must use ordinary (national) procedures.

6.3.

The European regulations are the most convenient – they create certain system of application and information and also enforcement, not connected with the national domicile of the defendant.

## **Instructions for contributors**

### **1 References**

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to carefully examine our sample references which are preceded by [•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

#### **1.1 Reference to judicial decisions**

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

#### **1.2 Reference to legislation and treaties**

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of

legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol)
- Art. 267 TFEU
- Art. 5 Uitleveringswet [Extradition Act]

### **1.3 Reference to books**

#### ***1.3.1 First reference***

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, *The Law of Nations* (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, *The Relation Between International Law and Municipal Law in the Netherlands and the United States* (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., *European Union Law: cases and materials* (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, *Recht en rechtvaardigheid in Japan* [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

#### ***1.3.2 Subsequent references***

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] • Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

### ***1.4 Reference to contributions in edited collections***

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co-editors only the name and initials of the first editor are given, followed by ‘et al.’):

[Author’s initial(s) and surname(s)], [‘Title of contribution’], [in] [Editor’s initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, ‘The Growth and Retreat of Federal Competence in the EU’, in R. Howse and K. Nicolaidis (eds.), *The Federal Vision* (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

### ***1.5 Reference to an article in a periodical***

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal’s preferred style of citation):

[Author’s initial(s) and surname(s)], [‘Title of article’], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, ‘Re-Creating Legal Space for the First Law of Aotearoa-New Zealand’, 17 *Waikato Law Review* (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, ‘Bicameral Politics in the European Union’, 48 *JCMS* (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

### ***1.6 Reference to an article in a newspaper***

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

[Author’s initial(s) and surname(s)], [‘Title of article’], [Title of newspaper], [Date], [Page(s)]: • T. Padoa-Schioppa, ‘Il carattere dell’ Europa’ [The Character of Europe], *Corriere della Serra*, 22 June 2004, p. 1.

### **1.7 Reference to the internet**

Reference to documents published on the internet should present the following form: [Author’s initial(s) and surname(s)], [‘Title of document’], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, ‘Les Roms sont aussi des citoyens européens’, <[www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens\\_1409065\\_3232.html](http://www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html)>, visited 24 October 2010. (NB: ‘http://’ is always omitted when citing websites)

### **1.8 Cross-references**

In referring to other chapters and sections of the text, as well as to other footnotes, *supra* is used to refer to previous sections of the contribution, whereas *infra* is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 *supra*.
- See text between n. 10 and n. 12 *infra*.
- Compare n. 10 *supra*.

## **2 Spelling, style and quotation**

In this section of the authors’ guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as ‘common’ and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

### **2.1 General principles of spelling**

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
  - [...] the Court’s case-law concerning direct effect of directives [...]
  - The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.

- There is no requirement that the spouse, in the words of the Court, ‘has previously been lawfully resident in another Member State before arriving in the host Member State’.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

## **2.2 *General principles of style***

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., ‘the Court’ for ‘the European Court of Human Rights’). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

## **2.3 *General principles of quotation***

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: ‘aaaaa’).
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: ‘aaaaa “bbbbbb” aaaaa’).
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].