

ANOTHER REVOLUTION IN CIVIL PROCEDURE?

Draft amendment to the Code of Civil Procedure, including withdrawing of a special procedure in business cases and submission of disputes between entrepreneurs to the general rules of civil procedure, was presented to the Sejm on 15 June 2011.

The draft amendment involves, on the one hand, submission of disputes between entrepreneurs to the general rules of civil procedure, while on the other hand, it introduces solutions in order to improve and accelerate court proceedings.

According to the justification to the amendment, there is no reason why disputes between entrepreneurs should be subjected to different rules of civil proceedings. Especially the fact that entrepreneurs are treated as professionals in the field of business activity they pursue does not justify the fact of imposing higher requirements on them than those in ordinary civil proceedings, as professionalism in the field of business activity cannot be equated with the professionalism of legal knowledge.

Despite withdrawing of a special procedure in business cases, disputes between entrepreneurs will continue to be considered by commercial courts as divisions of state courts.

The main goal of the amendment is to simplify civil procedure by liquidating limitation of evidence, which imposes on the parties an obligation to disclose all allegations together with supporting evidence, or otherwise the right is lost to refer thereto in the course of the proceedings. Limitation of evidence causes excessive formalization of the procedure, as a result of which "formal considerations, not the actual content of the legal relationship between the parties, determines whether a business case is won."

Limitation of evidence has been replaced by concentration of presentation of evidence based on the principle of the power of the judge. According to the amendment, the parties may disclose facts and evidence until the hearing is closed, however, the court omits late allegations and evidence, if the party failed to disclose them in due time without its fault, or if their admission will not cause delay in considering the case, or if other exceptional circumstances occur. Therefore, it will depend on the court's evaluation whether the party has disclosed allegations or evidence in due time, and if the court establishes that allegations or evidence have been disclosed too late, the court will be obligated not to take them into consideration.

Undoubtedly, current rules of business proceedings are stringent, and in particular, limitation of evidence causes many entrepreneurs lose their cases, because they do not disclose evidence on time. The proposed changes were criticized by entrepreneurs who are concerned with the duration of proceedings. Whether these concerns will prove justified is still unknown; after the first reading at a sitting of the Sejm, the draft was passed on to the Special Committee for the Codification Changes.