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Evidentiary Hearings in Civil Proceedings – Selected Problems

Abstract

The purpose of this article is to discuss selected problems related to conducting evidentiary hearings in civil proceedings, with a special emphasis on the essence of a motion for evidence and on the option to file it. The performed analysis covered both primary and secondary legislation concerning the formal matters related to filing motions for evidence, the possibilities of admitting evidence, the procedure of taking evidence, and the deliberations on the outcome of the evidentiary hearings. The regulations as they are in force at present offer no possibility to present evidence at the discretion of the parties and participants of the proceedings. It is therefore very important to use the evidence in accordance with the legislator's suggestions so as not to be deprived of the chance to receive a favourable court decision only because the court finds the motion for evidence as having been filed too late.

Keywords: document, civil proceedings, motion for evidence

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According to the Supreme Court's ruling, "Issuing a correct ruling depends most of all on an exhaustive explanation of all the circumstances of the case, concerning both the objective and subjective aspects and the personal background data of the parties involved. Preparing and conducting evidentiary hearings in a proper manner thus contributes to the proper settlement of the case and to savings on time, reduced costs of the proceedings, and if the ruling is challenged, the court of second instance is able to issue a decision on the essence of the case at issue."[2] The legislator has not imposed a hierarchy of evidence, which means that all the pieces of evidence are equivalent. Which is why we can speak of the precedence of access to evidence, but not of the precedence of probative value of documentary evidence as opposed to other evidence.[3] Moreover, the said set of evidence is not exhaustive. On account of the above, a court may admit evidence not listed in the Act of 17 November 1964 – Code of Civil Procedure[4] if the nature of this evidence is not contrary to the law.[5]

It is necessary to stress that at present, the legislator is working on a range of changes to the civil procedure, including in the area of regulations regarding evidentiary hearings, especially motions for evidence.

Motion for evidence

Article 3 of the CCP speaks of a principle of material truth,[6] according to which the parties and the participants of proceedings are obliged to perform procedural acts in accordance with good practice, offer explanation of the circumstances of the case truthfully and without concealing anything, and provide relevant evidence. Furthermore, literature sources stress that the provision in question establishes a prohibition of falsehood in court, which is addressed to parties and other partici-

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2 Resolution of the General Assembly of the Justices of the Supreme Court, Kw. Pr., 2/74, OSNCP 1974, No. 12, item 203.

3 B. Kaczmarek-Templin, [in:] E. Marszałkowska-Krześ (ed.), *Postępowanie cywilne. Pytania egzaminacyjne. Tablice*, Warszawa 2011, p. 81.

4 Uniform text in the Journal of Laws of 2016, item 1822 as amended, hereinafter: the CCP.

5 H. Dolecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 2013, p. 185.

6 Z. Knypl, *Prawo do sądu w świetle prawa międzynarodowego i prawa polskiego*, „Problemy Egzekucji Sądowej" 1996, 17, p. 5.

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pants of the proceedings (and to their respective representatives), and a requirement of the completeness of explanation offered by the said entities.[7] The adopted adversarial system, however, makes the burden of proof rest with the parties.[8]

The act uses different notions such as: presenting evidence, providing evidence, adducing evidence or citing evidence. Because of this diversity, literature tends to use one expression – presenting evidence, which is contained in Article 3 of the CCP, essential to the issues in question.[9]

Presenting evidence is the first stage of evidentiary hearings, and no evidentiary hearings could take place without it.[10] This stems from the fact that there are no special preparatory proceedings in civil procedure, which does take place in a criminal trial. And this is why specifying the source of evidence is essential.[11] Presenting evidence basically involves pointing to a given piece of evidence, the presentation of which is essential in determining the facts of relevance to settling a given case.[12] It needs to be emphasised that a sole mention of evidence, without citing it as actual evidence, is not a presentation of evidence.[13] And the in-court form of presenting evidence is a motion for evidence.[14]

The act does not specifically say who is entitled to file a motion for evidence but it seems that such motions can be filed by any participant of the proceedings, meaning an entity authorised to perform procedural acts.[15] The court is obliged, in turn, to examine motions filed by parties by issuing a ruling on admitting or rejecting any such motion.[16]

A motion for evidence needs to comply with certain formal requirements.[17] According to general principles, it can be made both in writing and orally in the

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7 A. Jakubecki, *Naczelne zasady postępowania cywilnego w świetle nowelizacji Kodeksu postępowania cywilnego*, [in:] *Czterdziestolecie kodeksu postępowania cywilnego. Zjazd Katedr Postępowania Cywilnego w Zakopanem*, Kraków 2006, pp. 361 and 363.

8 H. Dolecki, op. cit., pp. 182–185.

9 K. Kołakowski, *Dowodzenie w procesie cywilnym. Komentarz do przepisów Kodeksu postępowania cywilnego uwzględniających nowelizację z 2000r.*, Warszawa 2000, p. 19.

10 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), *Dowody w postępowaniu cywilnym*, Warszawa 2010, pp. 297–298.

11 R. Kmiecik, [in:] idem (ed.), *Prawo dowodowe. Zarys wykładu*, Kraków 2005, pp. 162–163.

12 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 298; cf. SC decision of 5 June 1934, C II 859/34, not published.

13 J. Knap, *Postępowanie dowodowe*, Katowice 1966, p. 15.

14 P. Rylski, *Działanie sądu z urzędu w zakresie ustalania podstawy faktycznej rozstrzygnięcia w procesie cywilnym*, Warszawa 2009, p. 290.

15 Ibidem, pp. 65–66.

16 K. Kołakowski, op. cit., pp. 19–20.

17 T. Wiśniewski, *Przebieg procesu cywilnego*, Warszawa 2009, p. 205.

form of a recorded statement in the minutes. As an exception, according to Article 505[2] of the CCP, the submission including motions for evidence in simplified proceedings shall be made using an official form. In general, motions for evidence are included in petitions and in preparatory documents, but there is an option to file them in separate submissions.[18]

The CCP does not include a provision explicitly defining the content a motion for evidence should come with.[19] It is a solution that gives rise to negative effects. Right now, only other provisions of the Code set the framework of the requirements a motion for evidence needs to meet.[20] Pursuant to Article 126 of the CCP, every submission shall include an operative part of the motion or statement, and evidence to support the quoted circumstances. According to Article 236 of the CCP, in turn, the evidentiary ruling shall include the court's indication of the facts found and the evidence taken. This proves that a motion for evidence shall name the evidence the motion concerns and the factual circumstances that are to be revealed therein.[21] According to the Supreme Court's line of argument, "since [...] the defendant's motion did not include an evidence thesis, then in the event of a lack of one structural element – an evidence thesis, the motion in question could not have been considered effective because if the party's act is performed with the so-called structural requirements being neglected, such an act is not a valid procedural act."[22]

As for the significance of evidence, it all depends on its type.[23] If it is documentary evidence, it is necessary to give the name, a description of its content, and indicate its source, i.e. who it comes from.[24] If documents contain a similar content, it is necessary to provide additional identification details such as: the date, the place of issue, the number, etc.[25] When a document is in the files of another case, it is important to provide the reference number and the name of the court where the case is or was handled.[26]

If a motion for evidence concerns a document not in possession of the party who is filing the motion, it is also necessary to indicate who is in possession of this

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18 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 300.

19 W. Siedlecki, Z. Świeboda, *Postępowanie cywilne. Zarys wykładu*, Warszawa 2004, pp. 228–231.

20 T. Wiśniewski, op. cit., p. 205.

21 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 301.

22 Supreme Court's judgement of 11 January 2008, VCZ121/07, Lex 477620.

23 B. Kaczmarek-Templin, *Dowód z dokumentu elektronicznego w polskim procesie cywilnym*, Warszawa 2012, p. 94.

24 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 302.

25 Ibidem.

26 B. Kaczmarek-Templin, *Dowód...*, p. 94.

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document or where it can be found.[27] Apart from that, in the light of Article 248, § 1 of the CCP in relation to Article 208, § 1, item 5 of the CCP, the filing party shall address the court with a request to order the person in possession of the document in question to deliver the document to the court for the purpose of taking of evidence.[28] There are some limitations to the abovementioned duty, which need to be borne in mind. Firstly, the duty does not apply to classified information. Secondly, a person who could refuse to give evidence in court as a witness with regard to circumstances covered in the content of the document or who holds the document in possession on behalf of a third party who could refuse to give evidence for the same reasons can be exempt from this duty. Even then, it is impossible to refuse to present such a document when its holder or a third party are obliged to do so out of regard for at least one party or if the document is issued in the interest of the party who demands the taking of evidence. Also, a party may not refuse to present such a document if the penalty the party would be exposed to as a result of presenting it involves losing the case.

Admission of evidence

Courts will admit evidence as a result of a party's exercise of right to adduce evidence or ex officio if it is necessary to settle the case.[29] Pursuant to Article 217, § 1 of the CCP, a party may adduce evidence until the case is closed to substantiate their motions or to refute the opposing party's claims. Courts will ignore late claims and evidence unless the interested party proves that these were not submitted within the set deadline because of no fault of theirs or that taking late claims and evidence into account will not cause a delay in examining the case or that other special circumstances exist. Courts will ignore claims and evidence if they are adduced only to gain time or if any disputable circumstances have been explained to a sufficient extent. This does not mean that a court is absolutely obliged to take the provided evidence. The CCP does not define cases in which a court may refuse to admit evidence. The doctrine, however, mentions situations in which evidence does not concern facts of relevance to the settlement of the case (irrelevant evidence) if it is

27 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 302.

28 T. Demendecki, [in:] A. Jakubecki (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2012, p. 339.

29 W. Siedlecki, Z. Świeboda, op. cit., pp. 228–231.

unacceptable or obsolete.[30] The court will also make sure whether the requirements of the possible evidence preclusion are fulfilled.[31] If the answer is negative, the court shall dismiss the evidence. As found in the doctrine, a court's determination of facts based on evidence indicated by a party and admitted *ex officio* – not being admitted and taken formally in the hearing – violates the general rules of procedure in the area of immediacy, disclosure, equality of the parties, and the adversarial system.[32] In an evidentiary ruling, the court shall first and foremost consider the parties' motions for evidence but also the principle of concentration of evidence, according to which the court shall counteract stalling the proceedings and aim at a settlement at the first hearing if it is possible without detriment to the clarification of the case.[33]

In the case of an approving evidentiary ruling, the court indicates facts that are to be determined, the evidence, and the judge or the court that shall take such evidence, and – if possible – also the date and the place of the taking of evidence.[34] When designating the judge, the court may leave the indication of the date of the taking of evidence to the designated judge. At the request of a party, the designated judged or the summoned court may supplement the ruling of the adjudicating court by interrogating new witnesses about the facts indicated in the ruling. A motion for interrogating new witnesses may be filed by any of the parties, i.e. not only the party who filed such a motion originally.[35]

Such a ruling is necessary when a court admits evidence both at a party's request and *ex officio*.[36] Moreover, it can become an integral part of a case's minutes and be included in a separate document as well.[37]

What is more, the court is not bound by its evidentiary ruling so it may repeal it or amend it at a closed door hearing, according to the situation. Evidentiary rulings are unappealable, and so they do not need a substantiation. But in an appeal hear-

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30 E. Rudkowska-Ząbczyk, [in:] E. Marszałkowska-Krześ (ed.), *Kodeks postępowania cywilnego. Komentarz*, 2013, Legalis.

31 T. Wiśniewski, op. cit., p. 205; E. Marszałkowska-Krześ, *Glosa krytyczna do wyroku SN z 4.1.2007r., V CSK 377/06*, OSP 2008, Vol. 1, item 8.

32 Supreme Court's judgement of 4 April 2001, I PKN 571/00, OSNP 2003, No. 14, item 330.

33 K. Flaga-Gieruszyńska, [in:] A. Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2014, p. 480.

34 W. Berutowicz, *Postępowanie cywilne w zarysie*, Warszawa 1984, p. 268.

35 M. Krakowiak, [in:] A. Góra-Błaszczykowska (ed.), *Kodeks postępowania cywilnego. Tom I. Komentarz do art. 1–729*, Warszawa 2013, p. 627.

36 T. Ereciński, [in:] idem (ed.), *Komentarz do Kodeksu postępowania cywilnego. Część pierwsza. Postępowanie rozpoznawcze*, Warszawa 2001, p. 549.

37 T. Demendecki, op. cit., p. 325.

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ing, a party may file an objection against the first instance court's unjustified refusal to admit the evidence the party provided.[38]

As argued by the Supreme Court in its judgement, failure to issue formal rulings on admitting or refusal to admit certain evidence could be considered an act of negligence without a significant impact on the settlement of the case, but only in a situation in which the court has sufficiently and accurately determined the evidence that could be the basis for substantive and objective adjudication.[39]

Taking of evidence

As a rule, the hearing of evidence takes place from the issuance of evidentiary ruling to the final settlement during the trial.[40] The legislator has provided for certain exceptions from this rule. An evidentiary ruling admitting court expert evidence may be issued at a hearing in camera after hearing the parties' motions regarding the number of court experts and their selection. If necessary, the chair may order an inspection even before the trial starts. In order for payment proceedings, the evidence is taken at a hearing in camera. Evidence obtained from files or explanations of public administration authorities may be also taken outside the trial. Moreover, evidence may be taken at an open hearing, other than the trial before the adjudicating court, when it is a duty of the summoned court or the designated judge.

Basically, and in accordance with the principle of immediacy, evidentiary hearings take place before an adjudicating court. The legislator has provided for exceptions from this rule as well, offering the adjudicating court a possibility to entrust the taking of evidence to one of its members (designated judge) or to another court (summoned court). The entrustment in question concerns only taking specific evidence, and may take place only in situations defined in the act.[41]

The legislator has offered adjudicating courts the possibility to entrust the taking of evidence to another entity in the following cases: when the nature of evidence prevents the adjudicating court from taking it, because of significant inconvenience, or when the cost of taking evidence by that court would be incommensurate to the value of the subject of the proceedings. These exceptions are not subject to a broad interpretation.[42]

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38 Ibidem.

39 Supreme Court's judgement of 19 January 2007, III CSK 368/06, not published.

40 P. Rylski, [in:] Ł. Błaszczak, K. Markiewicz, E. Rudkowska-Ząbczyk (ed.), op. cit., p. 332.

41 E. Rudkowska-Ząbczyk, [in:] ibidem, p. 335.

42 T. Ereciński, op. cit., p. 261.

In proceedings before a designated judge or a summoned court, all of the provisions applied before an adjudicating court apply, including the rules of evidentiary hearings, especially those concerning the taking of particular pieces of evidence.[43] What shall be stressed is that an adjudicating court may not choose not to assess the testimony heard by way of the witnesses' judicial assistance in the event the provided explanations are contradictory on account of the fact that the court had no option to watch the witnesses' behaviour directly during their giving of testimony, because if it is necessary, it should order the witnesses to be re-interrogated by the designated judge or before the adjudicating court.[44] Designated judges and summoned courts may be subject to exclusion by virtue of the law.[45] This is why a party may request that a summoned court be excluded pursuant to Article 48 of the CCP.[46] A designated judge and a summoned court do not, in fact, decide on merits, but the Supreme Court has found that this does not mean that there is no option for such a judge to be subject to exclusion by virtue of the law.[47]

A designated judge and a summoned court acquire the rights of the chair of the adjudicating court and of the adjudicating court itself in the scope of the evidentiary hearings they are entrusted with. The parties may complain about the acts of negligence of such a judge or court no later than at the nearest trial.

The provision of judicial assistance is regulated in detail by the Regulation of the Minister of Justice of 23 February 2007 – Rules of procedure for ordinary courts.[48] A summoned court and a designated judge may not admit evidence obtained as a result of interrogating the parties and from the court expert's opinion by themselves.[49] When the evidence given by witnesses could be understandable only in connection with inspection, the summoned court or the designated judge may take evidence by inspection if it is justified by the principles of economy of proceedings.[50]

According to Article 235, § 2 of the CCP, if the nature of the evidence does not prevent it, the adjudicating court may decide that the evidence be taken with the use of technical measures making it practicable remotely. The adjudicating court takes evidence in the presence of the summoned court or a court clerk in that court.

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[43] K. Flaga-Gieruszyńska, op. cit., p. 478.

[44] Supreme Court's judgement of 20 November 1973, I CR 629/73, Legalis.

[45] M. Krakowiak, op. cit., p. 27.

[46] T. Ereciński, op. cit., p. 465.

[47] M. Krakowiak, op. cit., p. 627.

[48] Journal of Laws No. 38, item 249.

[49] B. Kaczmarek-Templin, *Dowód*..., p. 98.

[50] K. Piasecki, [in:] idem (ed.), *Kodeks postępowania cywilnego. Tom I. Komentarz do artykułów 1–366*, Warszawa 2010, p. 1322.

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The introduction of such a provision is an expression of the adaptation of civil procedure to the challenges and opportunities offered by the technology of the 21st century.[51] What is more, the solution is justified by the need to develop modern communication techniques, and is in line with the trends occurring in the EU law and in the legislations of foreign countries, and guarantees consistency between the civil and criminal procedural laws.[52] This way, a possibility to take evidence remotely appeared (mainly hearing witnesses' testimony using videoconferencing solutions), which is an expression of the modernisation of civil procedure and of the economy of proceedings (especially when evidence should be taken abroad).[53]

Paragraph 3 of the provision in question includes a delegation of legislative powers on the basis of which the Minister of Justice issued the Regulation of 24 February 2010 on Equipment and Technical Means Enabling the Taking of Evidence at a Distance in Civil Proceedings.[54] According to the regulation, the taking of evidence remotely occurs with the use of analogue or digital equipment enabling telecommunication within the meaning of Article 2, item 27a of the Act of 16 July 2004 – Telecommunications Law,[55] especially equipment enabling bidirectional real-time communication that involves the transmission of sound or image and sound between the participants of the procedural act (a video-conference). Moreover, evidence may be taken at a distance using a telecommunications network within the meaning of Article 2, item 35 of the said Act, especially a telecommunications network used by the court. The said equipment shall guarantee the integrity and reliability of telecommunication. But when the telecommunication requires confidentiality, it is necessary to apply technical measures or solutions granting access to a legible form of secured communication to authorised persons only.

It is also necessary to mention a regulation concerning the taking of evidence abroad, provided for in Article 1131 of the CCP. According to the provision in question, courts address courts or other authorities of foreign countries with a request that evidence be taken abroad. The requests are sent directly if this is accepted under the law of the requested state or through the Polish diplomatic mission or consular office. This does not rule out other ways to send such requests. A court may request to be notified directly together with the parties, including their representatives

[51] K. Flaga-Gieruszyńska, op. cit., p. 478.

[52] T. Demendecki, op. cit., p. 323; cf. also the act of 10 January 2003 amending the Code of Criminal Procedure, Regulations introducing the Criminal Procedure Code, Law on Witnesses, and Law on Protection of Classified Information, Journal of Laws No. 17, Item 155 as amended.

[53] K. Flaga-Gieruszyńska, op. cit., p. 480.

[54] Journal of Laws No. 34, item 185.

[55] Journal of Laws No. 171, item 1800 as amended.

and attorneys, of the time and place of taking of evidence in order to be able to appear at the taking of evidence or to participate in the process. A court may appoint one of its members (designated judge) to appear at the taking of evidence abroad if performed by a court or another authority of the requested state, and to take part in the activity if the law of the requested state does not forbid it. The court may also appoint a court expert to this end. Given the approval of a requested state, the court or the designated judge may take evidence directly in the requested state. The taking of evidence abroad in civil or commercial matters is regulated in the international law as well, i.e. in the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters,[56] and when it comes to EU (excluding Denmark), the issue is addressed in the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.[57]

Deliberating on the outcomes of evidentiary hearings

Deliberating on the outcomes of a hearing is the last stage of proceedings before a case is closed. It involves the court arranging – with the participation of the parties involved – of the outcomes of the evidentiary hearings according to their relevance to the determination of particular facts that will become the basis for the settlement of the court dispute.[58]

According to the principle of the discretionary assessment of evidence, expressed under Article 233 of the CCP, after the proceedings ends, the court assesses the credibility and the probative value of evidence according to its own conviction, based on an extensive analysis of the collected resources. Given the existing judicial decisions of the Supreme Court, it is necessary to consider all the evidence taken in the hearing as well as all circumstances accompanying the taking of particular pieces of evidence, which are of relevance to the assessment of their probative value and credibility.[59] The court will use this as the basis to decide how meaningful a party's refusal to present evidence or hindrance to the taking of evidence – despite the court's orders – is.

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56 Journal of Laws of 2000 No. 50, item 582.

57 OJ EU of 27 June 2001, L series, No. 174, p. 1 as amended.

58 T. Misiuk-Jodłowska, [in:] J. Jodłowski, Z. Resich, J. Lapierre, T. Misiuk-Jodłowska, K. Weitz, *Postępowanie cywilne*, Warszawa 2009, p. 360; W. Berutowicz, op. cit., p. 273.

59 Supreme Court's decision of 18 July 2002, IV CKN 1256/00, lex no. 80267; Supreme Court's decision of 11 July 2002, IV CKN 1218/00, lex no. 80266.

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Probative value is the degree of conviction a court gains as a result of taking particular pieces of evidence to verify the authenticity or falsity of claims regarding the factual circumstances of relevance to settling a case.[60] Credibility, in turn, is what determines whether a given piece of evidence can be considered reliable on account of its individual characteristics and objective circumstances.[61] According to the justification of the Supreme Court's judgement, the framework of the discretionary assessment of evidence needs to be demarcated by the requirements of procedural law, real-life experience, rules of logical thinking, and a certain level of legal awareness, based on which the court analyses the provided evidence in a rational and extensive manner as a whole, selects particular pieces of evidence and by weighing their probative value and credibility, collates them with the remaining body of evidence.[62]

The court's assessment is manifested in the ruling closing the proceedings. The ruling includes e.g. a set of determined facts the court found proven, the evidence the court relied on, and the reasons motivating the court's decision to reject the credibility and probative value of the remaining evidence provided.[63]

Suggested changes

The Ministry of Justice's draft amendment to the Code of Civil Procedure and some other acts, dated 27 November 2017 (hereinafter: "the Draft"[64]), provides for several significant changes both in the scope of the formulation of motions for evidence and restrictions in that scope. So far, all the motions for evidence have been filed on an "as to" basis, which resulted very often in a broad determination of facts that were to be proven with a given piece of evidence (e.g. "as to the legitimacy of the claim"). According to the suggested amendment of Article 235^1 of the CCP, its post-amendment wording would be: "In the motion for the taking of evidence, the party is obliged to determine the evidence in a way that makes it possible to take it and list the facts that are to be proven using the provided evidence". In practice, this means a duty of the precise indication of both the provided pieces of evidence and the specific facts that are to be proven in the filed motion for evidence. It needs

60 T. Demendecki, op. cit., p. 323.

61 Ibidem.

62 Judgement of 27 September 2002, IV CKN 1316/00, lex no. 80273.

63 B. Kaczmarek-Templin, *Dowód*..., p. 99.

64 The draft and the justification are available at: http://maclawyer.nazwa.pl/lobbing/wp-content/uploads/2017/12/KPC-projekt-zmian-MS-z-27-listopada-2017.pdf

to be added that the Draft also provides for changes in the scope of the refusal to take evidence. At present, the CCP speaks of different types of the non-admission of evidence, which can occur in the form of disregard, return, or dismissal of a motion for evidence. The amendment aims at implementing one type of non--admission of evidence, which is to be the disregarding of evidence, issued in the form of a ruling.[65]

A change in the content of a motion for evidence translates into a change of the content of the ruling to admit evidence. According to Article 236 of the Draft, "§ 1. In its ruling to admit evidence the court shall indicate the pieces of evidence and the facts that are to be proven, and – if necessary and possible – also the date and the place of the taking of evidence. § 2. If a party has requested a decision regarding the evidence, the ruling shall feature a reference to the content of the party's motion. § 3. When entrusting a designated judge or a summoned court with the taking of evidence, the court is obliged to indicate the judge or the court. If the date or the place of the taking of evidence has not been defined, they shall be determined by the designated judge or the summoned court.". The Draft described above intends to introduce an additional fee on a motion to summon a witness or a party to appear in court, with the fee to amount to PLN 100.00 per person whom the motion concerns, and in the event a compulsory appearance of a witness or court expert is necessary, there is to be an additionally fee of PLN 200.00 to be paid.[66]

Conclusion

Evidentiary hearings are a crucial stage of civil proceedings. It also makes the latter different from criminal or administrative proceedings. All evidence and facts are determined before a civil court after civil proceedings are initiated. A significant part is played by the court, who is able, based on relevant regulations, to consider the provided evidence late and dismiss motions for evidence, which may, in turn,

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65 Article 235^2 of the Draft reads as follows: "In particular, the court may disregard evidence: 1) whose taking is ruled out by a provision of the Code; 2) aimed at proving an objective fact, of no relevance to the settlement of the case or proven according to the filing party's claim; 3) of no use to proving a given fact; 4) that is impossible to be taken; 5) aimed only at prolonging the proceedings; 6) when a party's motion does not comply with the requirements of the preceding article, and the party has failed to amend the found mistakes despite being requested to do so. § 2. When disregarding evidence, the court issues a ruling."

66 Article 29a of the Draft states that "1. There is a fixed fee of PLN 100.00 per one person whom the motion concerns to be collected on a motion to summon a witness, a court expert or a party to appear in court. 2. If a compulsory appearance of a witness or court expert is necessary, there is an additional fee of PLN 200.00 to be paid."

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have a direct impact on the final ruling issued in the case. On account of the above, it is essential to submit evidence in the right way and on time to prove the facts of relevance to the settlement of the case and so as not to risk losing the case because of a failure to comply with the provisions of the CCP.

As for the suggested changes, all of the new regulations concerning the elements of a motion for evidence and the consequences of non-compliance therewith shall be considered in positive terms. The precision in the determination of facts that are to be proven will make it possible to take a given piece of evidence quicker and more accurately because this will be done only in the scope defined in the motion, and not with consideration of all possible circumstances.

The suggested changes in the scope of imposing a fee on motions to summon a witness or a party to appear in court should be viewed in a negative light, though. The solution is rather controversial because the implementation thereof will restrict the possibility to file motions for evidence. It seems highly inexplicable to privilege a party being in a better financial situation by granting this party a way to file motions for evidence and thus prove facts which translate into legal effects. The solution is bound to make civil proceedings more expensive, which may become a real obstacle in taking advantage of the constitutional right to a fair trial. Which is why the author believes that the institution of filing motions for evidence shall remain free of charge out of concern for the equality of the parties to the proceedings and for a universal guarantee of the said right to a fair trial.