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Discretionary power of the judge in civil proceedings

Abstract. The paper constitutes an elaboration upon the system of discretionary power of the judge in evidentiary proceedings. This issue remains a stream of systematic and in-depth research and considerations related to the transformation of polish civil procedure. Upon the amendment to provisions of procedural law in 2012, a rigorous preclusion system, aimed at concentration of evidence, was replaced by another – the system of discretionary power of the judge.

Key words: principle of evidence preclusion, principle of discretionary power of the judge, delayed evidence and claims, disregarding delayed evidence or claims, admission of the evidence ex officio.

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Tiesneša diskrecionārā vara civilprocesā

Anotācija. Rakstā tiek apspriestas tiesneša diskrecionārās varas pilnvaru sistēmas problēmas, veicot tiesas izmeklēšanu. Šis jautājums ir sistemātiskas un padziļinātas izpētes tendence, kas saistīts ar Polijas civilprocesa pārveidošanu. Pēc grozījumu iestrādāšanas procesuālās likumdošanas normās 2012.gadā, stingra preklūzijas sistēma, kuras mērķis bija veicināt pierādījumu koncentrēšanu, tika aizstāta ar tiesneša diskrecionārās varas pilnvarojumu.

Atslēgas vārdi: pierādīšanas preklūzijas princips, tiesneša diskrecionārās varas princips, iegūti ar nokavēšanos lietišķi pierādījumi vai apgalvojumi, pierādījuma pieļaujamība.

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Дискреционные полномочия судьи в гражданском судопроизводстве

Аннотация. В статье обсуждаются проблемы системы дискреционных полномочий судьи при проведении судебного расследования. Этот вопрос является тенденцией систематического и углубленного исследования и размышления, связанного с преобразованием польского гражданского процесса. После внесения поправок в нормы процессуального законодательства в 2012 году, жесткая система преклюзии, призванной способствовать концентрации доказательств, была заменена другой системой – системой дискреционного полномочия судьи.

Ключевые слова: принцип доказательственной преклюзии, принцип дискреционных полномочий судьи, полученные с опозданием вещественные доказательства или утверждения, допустимость доказательств.

Introductory remarks

Under the Act of September 16, 2011 on the amendment of Act – Code of Civil Procedure and some other acts [1], with the effect from May 3, 2012 a model transformation of the Polish civil procedure has taken place. Eliminating separate proceedings in commercial matters, Polish legislator also changed the model of conducting evidentiary proceedings. Introducing in 2011 the amendment to the provisions of CCP, Polish legislator gave up the principle of prelusion of evidence present in commercial proceedings, for the system of discretionary power of the judge. In the light of solutions adopted in the Polish civil procedure, introduction of the system of conducting evidentiary proceedings on the basis of judicial discretionary power entails that the time limit for collection of procedural materials shall be determined by the judge by means of discretionary power. Upon the amendment to the provisions of the procedural law, the rigorous preclusion system, aimed at facilitating the concentration of the evidence, was replaced by the system of discretionary power of the judge.

It is crucial to emphasize at this point that the obligation to prove facts having significance (the burden of proving a fact shall lie with the person who asserts legal consequences arising relevance to the resolving of a case (Art. 227 CCP) has been imposed in Art. 6 CC [2] from this fact), and as the fundamental provision in this subject applied in legal proceedings, remains in close connection and is translated in relation to the provisions of CCP, which regulate the rules of evidencing. In civil proceedings the parties are obliged to present statements and prove all circumstances (facts) which pursuant to Art. 227 may be the subject of proof. Rules of the distribution of the burden of proof have a fundamental meaning for the correct assessment of the fulfillment by each party the obligation of proving with regard to the premises justifying the claim or dismissing the defendant from its fulfillment. It is the duty of the court to determine whether the party initiating the trial revealed facts, the existence of which is determined by the possibility of their effective entry (subsumption) in an adequate legal basis, and whether the defendant proved factual bases of the adopted line of defense or not.

Further considerations are first dedicated to elaborating upon varied constructions of the preclusion system and discretionary powers of the judge in the process of collecting evidentiary material. Subsequently, specific elements of the principle of judicial discretionary power will be presented.

2. Preclusion system. The system of discretionary power of the judge.

2.2. Preclusion System

Contemporary European legal systems are consistently reinforcing elements of adversarial character, emphasizing the individualistic nature of the civil trial and the principle of private rights autonomy. It is no different in Poland. An example of the changes taking place was the introduction to the Polish Code of Civil Procedure regulations extending and strengthening the preclusion system of the trial material. This system, broadly speaking, relies on imposing on the parties – more or less categorically – the burden of presenting to the court all known facts, evidence and defences within a specified (usually statutory) period, under the pain of losing the possibility of their further citing or invoking. The rigours of the preclusion system entail also the requirement for the parties to present – within a specified period as well – all known facts, evidence and defences, even in an alleged form, just in case the claims presented in the first place appeared to be effective or were not taken into account by the court. Given the severe consequences of the preclusion system, the legislator shall consistently complete it with the elements of the judge's discretionary power, which allows for the acceptance and identification of delayed claims about the facts, as well as evidence motions and defences, if the party could not present them earlier or the need of presentation emerged later.

Of particular importance for the dissemination of this system in Polish law was the Act of May 24, 2000 on the amendment of the Act – Code of Civil Procedure, Registered Pledges and Register of Pledges Act, Court Costs in Civil Matters Act, and Court Bailiffs and Execution Act [3]. These regulations had a clearly defined objective – collection of the evidence, concentration of parties' procedural acts in legal proceedings, and acceleration of proceedings in commercial matters. Upon this amendment to the provisions of procedural law in commercial matters, the plaintiff and the defendant lost the right to raise claims, defences or evidence in support thereof, not raised in the lawsuit or response to the lawsuit, regardless of their relevance to the resolving of a case, unless it has been proved that raising them in the lawsuit or response to the lawsuit was not possible, or that the need to raise them emerged later. Therefore, delayed claim of the party – perceived as precluded (evidence preclusion) – was omitted by the court, who treated it as if it had never been raised, and disregarded evidence and defences. This conclusion stemmed from an obvious assumption that in the system of evidence preclusion, the Act outlines expressis verbis the date up to which the party shall collect and take to the court the trial material in form of facts, defences and evidence, and indicates that in the event of not raising them in the appropriate phase of proceedings the party shall lose the possibility of their further raising.

2.3. The system of discretionary power of the judge

Under the current legal state in Poland, the system of evidence preclusion lost its importance since the legislator, taking into account views of doctrine and judicatory, prejudged that the time limits of collecting the trial material is decided by the judge. This is explicitly determined in the provisions of Art. 207 § 6 and Art. 217 § 2 CCP. It may be now assumed that the discretion is manifested in the judicial assessment of the conditions which allow for the judge's identification of delayed claims and evidence during the proceedings. In other words, the decision whether the party raised the claim or evidence in the adequate time or too late, will now depend on the judge's assessment. It is crucial to emphasize here that the Act amending the provisions of civil proceedings significantly changed the Art. 207 CCP, which along with amended Art. 217 CCP plays the first role in the system of judicial discretionary power. This change shall be accepted with approval.

According to the general rule resulting from Art. 207 § 1 CCP, the principle of optional response to the lawsuit was maintained, as the defendant may request it before the first sitting set for the trial. Derogation from this rule, applied within the system of judicial discretionary power, is provided in the Art. 207 § 2 CCP, allowing the presiding judge to order response to the lawsuit within a specified period (not shorter than two weeks). Ordering the

response to the lawsuit, the presiding judge shall determine the period in which the response is to be submitted. The period has a judicial nature, therefore, pursuant to Art. 166 CCP, it may be extended on application by the party, submitted before its deadline. It shall be noted here that the response to the lawsuit submitted in violation of the deadline set by the presiding judge shall be returned (Art. 207 § 7 CCP).

The literature contains an accurate statement that by establishing a strengthened system of judicial discretionary power as a method of collecting the trial material, the amendment distinguished two periods in which the appropriate judicial body, presiding judge or court, is to enforce its power. The border between the periods is set by the first sitting scheduled for the trail. Before this sitting the power belongs to the presiding judge and relies on the possibility to order the response to the lawsuit by the defendant and the submission of further preparatory documents, along with setting the order of submitting documents and deadline in which they should be submitted, as well as circumstances which shall be explained (Art. 207 § 2 and 3, sentence 1). The second period begins after the first sitting scheduled for the trial, i.e. «during proceedings» (Art. 207 § 3 sentence 2 in initio), and this is when the power is transferred to the court, which may order the submission of the preparatory document by the party [4].

Currently, it is also a rule that submission of preparatory documents during the proceedings takes place only when so is decided by the judge, unless the document covers only the request for evidence, with the court having the possibility to issue the order in a closed door sitting (Art. 207 § 3 sentence 2 CCP). This means that further preparatory documents – other than response to the lawsuit, or preparatory documents containing only evidence motion – may be submitted by the parties only when they have received authorization of the presiding judge, or of the court, in case the proceedings have already started. Determination of the rules regulating the submission of preparatory documents is aimed at excluding the possibility of parties submitting documents covering any of the elements mentioned in Art. 127 CCP[1] (apart from evidence motion), under the pretext that it is a lawsuit document, which is different from the preparatory document. Whether a lawsuit document is a preparatory document or not is decided on the basis of its content, and not the name given to it by the party. Therefore, if the party submits a lawsuit document covering any of the elements relevant to the preparatory document, (e.g. if it refers to the claims of the opposing party and evidence raised by it), except for the evidence motion, Art. § 7 CCP shall apply. Then such preparatory document submitted with the violation of this rule shall be returned.

The position of the legislator in this regard shall not be accepted without objections. It is naturally impossible to exclude a situation in which, under the power of regulations prior to the amendment, the possibilities of submitting preparatory documents were abused by the parties, which negatively affected the course of proceedings and distorted the principle of oral proceeding during the hearing. However, generalization of this conclusion, emphasized in the justification of the amendment project, was not to be approved and, consequently, rightly criticized in the literature[2]. Firstly, it was pointed out that elevating such solution of submitting preparatory documents to the rank of a principle violates (or, at least limits) the principle of the right to the trial. Secondly, what is also of a considerable importance, it unduly creates procedural formalism. This argumentation shall be complemented by the observation that in practice, parties aiming to avoid unnecessary formalism will submit annexes to the minutes of the hearing rather than preparatory documents, which makes this regulation redundant in this respect (Art. 161 CCP).

Obviously, the return of response to the lawsuit or preparatory document does not exclude the presentation of claims and evidence by the party during the trial according to the provisions of Art. 207 § CCP, which will be elaborated in further considerations.

2.4. Disregarding delayed claims or evidence as the element of the discretionary power of the judge

Podobnie jak w systemie prekluzji dowodowej, w systemie dyskrecjonalnej władzy sędziego rygorem pominięcia objęte są tak twierdzenia jak i dowody. Zgodnie z art. 207 § 6 i art. 217 § 2 k.p.c. sąd pomija spóźnione

In the light of solutions adopted in Polish law, it shall be agreed that the system of discretionary power of the judge was introduced to the trial proceedings as the main method of concentration of the trial material presented by the parties. Currently, there may be no doubts that the premise of disregarding some claims or evidence motions is their delayed presentation. However, here arises the question as to when we deal with delayed claims and evidence.

The answer is clear and, from one side, stems from the content of the regulations cited, i.e. delayed are considered claims and evidence not mentioned in the lawsuit, response to the lawsuit or further preparatory document[3]. From the other side, in my opinion, we shall consider as delayed all claims and evidence presented during the trial in order to prove the claims, or raised to overrule the claims and evidence of the opposing party (Art. 217 § 1 CCP). This assessment shall be determined by the fact whether the party could and, taking into account the natural course of the trial, should have raised the claims or evidence earlier because of their relationship with the material already presented. The finding that there was a delay in the presentation of the claims or evidence shall as a rule force the court to disregard them if the premise mentioned in Art. 217 § 2 and Art. 207 § 6 CCP, allowing the court to consider delayed claims and evidence, is not found.

Amending in 2012 the Code of Civil Procedure, Polish legislator subjected to disregarding *delayed expressis verbis* claims and evidence. However, the term of «defences», present in Art. 207 § 3 CCP before the amendment, was omitted. Consequently, some considerable doubts emerged in literature in relation to the range of terms «claims» and «defences», or rather to their subject range. The justification of the project of amending Act from September 16, 2011 entails that the term «claim» refers to factual circumstances. According to K. Weitz the term «defences» shall be understood as only the claims referring to the facts, and not to the right (legal argument) of the parties [5, 25].

On one hand, it shall be born in mind that the term «defences» is not clearly understandable in the doctrine and the judicature. It is commonly associated with the way of defendant's defense during the trial, and this is how it functions in the provisions of the Code of Civil Procedure, Art. 25 § 2, 202 sentence 1, 1104 § 2 and 1165 § 1, thus in the provisions which legislate the principle of preclusion. These are the demurrers, inaccurately referred to by the law as formal objections (Art. 221 and 222), the subject of which is the defendant's invoking on the inaccuracies in the initiation of proceeding, i.e. in bringing the civil action. Taking these objections into consideration by the court may lead to the return of the lawsuit, rejection of the lawsuit or assessment of the value of the object of litigation and, in consequence, transfer of the case to another court. In turn, of different nature are defences as to the merits of the case, the consideration of which justifies dismissing the action (e.g. performance defences, litigation defences, defences as to the waiver of a claim by the plaintiff in the previous lawsuit) [6, 197-198]. Therefore, it may be now assumed that when the party's notification of the defences as to the merits does not involve the necessity for the lawsuit to invoke a fact or evidence to justify it, such defences will not be subject to disregarding. This assessment, however, shall be different if the notification of defences will involve the necessity of invoking a fact in order to justify the claims, and demonstration of its factual bases. It shall be then assumed that in question are actually the claims, which pursuant to Art. 207 § 6 and Art. 217 § 2 CCP, are subject to the rigour of judicial discretionary power. As an example a situation may serve in which the defendant referring in response to the lawsuit to the fact of performing the deduction prior to the proceedings shall not only call on the fact of submitting the declaration of intent, but also on all other facts indicating the existence of their liability that has been deduced. If in response to the lawsuit they invoked only on the fact of submitting the declaration of intent of deduction, and subsequently, during, the trial, tried to demonstrate facts connected with the existence of their liability being the subject of deduction, it would mean that invoking of these facts was delayed, since the defendant should have invoked them in response to the lawsuit [5, 27-28]. In conclusion it shall be assumed that the submitted defences as to the deduction will not be demonstrated by the defendant.

3. Premises justyfing the consideration delayed claims or evidence

3.1. General remarks

As it has already been mentioned, the rigour of disregarding delayed claims or evidence provided in Art. 217 § 2 CCP is not absolute. The legislator demonstrated *expressis verbis* the conditions upon the fulfilment of which the court shall not disregard delayed claims and evidence, with their assessment being left to the institution of the discretionary power of the judge. Pursuant to Art. 207 § 6 CCP, the court shall not disregard delayed claims and evidence if the party makes it probable that it did not submit claims or evidence in the required time for no fault of its, or that the consideration of delayed claims and evidence does not cause a delay in examination of the case, or that there are other exceptional circumstances.

3.2. The absence of party's guilt in the delay of invoking claims or evidence

A starting point in the considerations of the premise of the absence of party's guilt in the invoking of claims or evidence shall be the thesis that the assessment of this premise shall involve established in the literature and judicature interpretation of this concept present in Art. 168 § 1 CCP, regulating the institution of reinstatement of the term to conduct procedural actions for the party that failed to fulfil the term for no fault of its.

In the judicature of the Supreme Court and common courts of law the position in which the absence of guilt in failing to conduct a procedural act on time is subject to evaluation involving all circumstances of a given case, in a manner which takes into account an objective measure of diligence that may be required from the party taking a proper care of its interests, may be considered common [7, s.7-8, s.114]. To provide an example, we deal with the absence of guilt in the event of party's or their representative's illness, which makes it impossible to take actions not only personally, but also with the engagement of other people's help in case of a natural disaster or catastrophe [8]. The judicature indicated at the same time that deficiencies in this respect, caused by even slight negligence, violate the objective measure of diligence and constitute a basis for recognition of the absence of party's guilt, as even slight negligence is a sign of failing to conduct the actions on time [9, s.12, s.30; 10; 11].

Consequently, an obvious conclusion may be drawn that we may speak about the absence of party's guilt only when there was some reason that caused the failure to meet the deadline. Such a reason occurs when the conduct of actions at all (in the objective sense) was impossible, as well as in cases where in given circumstances a party could not be expected to meet the deadline. What is more, the judicature established a rule that if the party is represented by a legal representative, the determination of party's guilt in the failure to meet the deadline shall entail the activities of the representative. Successful appointment of the representative in litigation causes both their actions and failures to entail consequences directly to the party. In turn, the representative is burdened with the failures of persons they engage. As a result, the party bears the consequences of failures in meeting the deadline by the representative and persons they engage. In other words, the failures in meeting the deadline by the representative and persons they engage exclude the recognition of the absence of party's guilt in the failure to meet the deadline [12; 13; 14; 15]. The judicature of the Supreme Court also points to the fact that the failure to meet the deadline shall not be evaluated as deprived of guilt if it results from inaccurate – from the standpoint of the rule of due diligence – communication of the representative with the party they represent [16; 17;18]. It is argued that failure to meet the deadline by the legal representative and the representative in litigation shall be treated as the failure of the party itself, who shall not claim that it does not take responsibility for the actions of these persons [19; 20].

Therefore, it is rightly stated in the judicature that the party and the representative in litigation bear the responsibility to regulate their common factual and legal relations and to organize the legal service in a way which allows for adequate fulfilment of litigation requirements by the representative. Consequently, faulty organization

of communication between the party and its representative in litigation, in principle, shall not be the reason for excluding the guilt in the failure to meet the deadline [21; 22].

3.3. The absence of guilt in the delay in examination of the case

The second premise, resulting from Art. 207 § 6 and Art. 217 § 2 CCP, upon the fulfilment of which the court shall not disregard delayed claims or evidence, namely the absence of guilt in the delay in examination of the case, will be fulfilled, if (i) the consideration of delayed claims and evidence does not interfere with the further conduct of the proceedings causing its prolongation; (ii) does not create the risk of a necessity to repeat the proceedings of taking evidence already carried out, as well as (iii) does not create the possibility to present evidence to the contrary by the opposing party [23, s.63].

Despite this, however, there may appear a doubt whether presenting the delayed evidence by the party may lead to a delay in examination of the case. It shall be born in mind that such evaluation shall be conducted with taking into consideration the state of the proceedings at the moment of presentation of the delayed evidence. The court shall answer the question if the consideration of the delayed evidence will cause the proceedings to be longer than in the case when these claims and evidence were disregarded. In other words, if the specific claims and evidence were presented in the required time – would the proceedings take as much time or less than in the case when the claims and evidence were presented with a delay?

In my opinion, Polish literature contains an accurate statement that if the evidence from hearing, despite the fact that it could have been presented in response to the lawsuit or in the lawsuit, is presented as late as at the trial during which the witness – because of the order of evidence actions adopted by the court – would not have been questioned, even if the evidence from their testimony was presented in the response to the lawsuit, it shall be assumed that the motion to accept the evidence from the testimony of the witness will not cause a delay in examination of the case. A similar assessment shall be applied to the situation in which, during the trial, evidence from the testimony of the witness who is present in the courthouse is demonstrated. There is no doubt that this unscheduled hearing will prolong the trial, however not to the extent that may cause a delay in examination of the case [23, s.63]. Such position shall be supported by the assumption that consideration of delayed claims or evidence will cause a delay in examination of the case if there is a necessity to postpone the trial in order to take delayed evidence proceedings.

3.4. Other exceptional circumstances

If non-submission of claims and evidence in the required time will take place without party's guilt, and their consideration will lead to a delay, the party may still refer to «other exceptional circumstances», justifying the admission of delayed evidence. It seems that the position of judicature in matters justifying the admission of the evidence *ex officio* (Art. 232 sentence 2 CCP) will be helpful in the evaluation of this premise.

The starting point for further considerations shall be some reflection on the importance of the principle of judicial discretionary power in the investigation of the material truth, which constitutes one of the main aims of the lawsuit. Here, a consideration of a more general nature may be embarked on. Contemporary civil procedure realizing the model of contradictory proceeding does not totally eliminate the participation of the court in the investigation of the truth. Preservation of the possibility of taking actions by the court ex *officio* constitutes a guarantee that, especially in matters in which the element of public law clearly dominates, the investigation of material truth will not be left solely to the parties. There will sometimes appear a situation in which non-examination of the evidence constituting the element of «collected material» by the court ex *officio*, would entail violation of fundamental principles which govern the administration of justice by the court. Failure of the court could make the supreme justice become supreme harm (*summum ius summa iniuria*). Such situations are prevented by the possibility of admitting evidence by the court *ex officio*. This entails that, although it is not clearly specified in the provision, admission of the evidence *ex officio* belongs to the discretionary

power of the judge. Sometimes, because of the public interest – it turns into an obligation.

In case law, there was also taken an effort to determine types of cases in which taking the evidence initiative by the court is not only justified but may also appear necessary. Namely, when the parties intend to circumvent the law; in matters on the state's laws; in case of fictitious trials; and in the event of glaring ineptitude of the party acting without a professional representative and who is not able to present evidence in order to prove its claims [24; 25].

In the conclusion of the evaluation of the third premise of consideration of delayed claims or evidence in form of «other exceptional circumstances», a view shall be expressed, according to which this premise will be fulfilled in very exceptional circumstances. It may take place especially in the event of glaring ineptitude of the party acting without a professional representative and who is not able to present evidence in order to prove its claims; in fictitious trials, as well as in cases where the element of public law dominates.

References:

1. Act of November 17, 1964, The Code of Civil Procedure, Dz. U. No.43, item 296, as amended; Act of September 16, 2011 on the amendment of Act – Code of Civil Procedure, Dz.U. 2011, No. 233 item.1381;
2. Act of April 23, 1964, The Civil Code, Dz. U. No.16, item 93 as amended;
3. Act of May 24, 2000 on the amendment of the Act – Code of Civil Procedure, Registered Pledges and Register of Pledges Act, Court Costs in Civil Matters Act, and Court Bailiffs and Execution Act Dz. U. 2000, No. 48, item 554 as amended;
4. Jankowski J., Nowelizacja kodeksu postępowania cywilnego (Amendment to the Code of Civil Procedure) // Monitor Prawniczy, 1/2012;
5. Weitz K., System koncentracji materiału procesowego według projektu zmian Kodeksu postępowania cywilnego (in:) Reforma postępowania cywilnego w świetle projektów Komisji Kodyfikacyjnej (The concentration process material according to the draft amendments of the Code of Civil Procedure (in :) The reform of civil procedure in the light of the Commission's proposals Codification) / edited by K. Markiewicz // Warsaw 2011;
6. Broniewicz W., Postępowanie cywilne w zarysie (Civil Procedure at a Glance) // Warsaw 2008;
7. Decision of the Supreme Court of January 14, 1972, III CRN 448/71, OSPiKA 1972, item 144;
8. Decision of the Supreme Court of April 26, 2007, III Cz 22/07, Lex no. 319631;
9. Decision of the Supreme Court of August 9, 1974, II CZ 149/74, OSPiKA 1975, No.12, item 30;
10. Decision of the Supreme Court of November 23, 2005, II CZ 103/05, unpublished;
11. Decision of the Supreme Court of December 1, 2011, I CZ 130/11, Lex no. 1133792;
12. Decision of the Supreme Court of May 30, 2007, II CSK 167/07, unpublished;
13. Decision of the Supreme Court of December 3, 2003, I CZ 139/03, unpublished;
14. Decision of the Supreme Court of July 23, 2002, II CZ 72/02, unpublished;
15. Decision of the Supreme Court of March 13, 2000, IV CKN 841/00, unpublished;
16. Decision of the Supreme Court of December 15, 2010, II CZ 154/10, unpublished;
17. Decision of the Supreme Court of April 17, 2008, I CZ 19/08, unpublished;
18. Decision of the Supreme Court of June 13, 2002, V CZ 53/02, unpublished;
19. Decision of the Supreme Court of October 27, 2009, II UZ 35/09, Lex no.564801;
20. Decision of the Supreme Court of May 30, 2007, II CSK 167/07, Lex no. 346193;
21. Decision of the Supreme Court of April 17, 2008, I CZ 19/08, unpublished;
22. Decision of the Supreme Court of July 21, 2011, V CZ 52/11, unpublished;
23. Pietrzykowski H., Metodyka pracy sędziego w sprawach cywilnych (Methodology of the judge in civil cases) // Warsaw, 2012;
24. Resolution of the Supreme Court of seven of May 19, 2000, III CZP 4/00, OSNC 2000, Nr.11.;
25. Judgment of the Supreme Court of December 20, 2005, III CK 121/05, unpublished.