

## **POLAND**

### **Act of.... on group litigation**

Art. 1.1. The Act shall concern judicial civil procedure in cases where the same type of claims are sought by at least 10 people, provided that either of the following requirements is fulfilled:

- 1) claims have the same factual basis; or
  - 2) claims have the same legal basis, and the crucial factual conditions justifying the claims are common for all the claims (this type of litigation shall henceforth be referred to as group litigation).
2. Commencement of group litigation shall not preclude the possibility of bringing individual claims by persons who did not join the group or by those who left the group.

Art. 2.1. Group litigation concerning pecuniary claims shall be possible only if the amount of claim of each member of the group has been made equal with the others (this can also be done in sub-groups).

2. In cases involving pecuniary claims, the claim can be solely concerned with establishing liability. In such cases the claimants shall not be required to demonstrate their personal basis for the claim.

Art. 3.1. Group litigation shall take place in district courts.

2. The court shall consider group cases in a chamber of three judges.

Art. 4.1. The claim shall be brought before the court by a group representative.

2. The group representative may be a person who is a member of the group, or a local consumer ombudsman.
3. The group representative shall handle the case in his/her own name, on behalf of all the group members.
4. The claimant must be represented by a lawyer.

Art. 5.1. The claim shall meet all the formal requirements established by the Code of Civil Procedure of 1964, and in addition it shall contain:

- 1) an application for the case to be considered in group litigation;
- 2) statement justifying membership in the group of all group members, and establishing the conditions specified in Article 1;
- 3) specification of the amount of claim of each member of the group (or each member of sub-groups);
- 4) specification of the means of informing potential group members of the possibility of joining the group;
- 5) statement that the claimant acts as group representative.

2. The claim shall be accompanied by statements of group members confirming their intention to join the group, that they accept the group representative, and that they

agree for their claims to be included in the group litigation, as well as an agreement between the group representative and a lawyer specifying the remuneration of the latter.

Art. 6 The court can refer the parties to mediation at any stage of the proceedings.

Art. 7.1. The claimant, if so requested by the defendant, shall give security for costs.

2. Such a request cannot be made by the defendant later than upon completion of the first procedural activity. The defendant shall not be able to request security for costs if he has accepted part of the claim and this amount already constitutes sufficient security for costs.

3. The court shall specify the time for satisfying the request for security for costs, not shorter than one month, as well as the amount of the security deposit, taking into account the probable costs to be incurred by the defendant. The deposit shall be paid in cash. It cannot exceed 20% of the value of the claim.

4. If during the proceedings it transpires that the amount of the security deposit is not sufficient for the costs of the case, the defendant may require an additional amount.

5. If the security is not paid, after the expiry of the time period specified by the court, the latter can, upon the request of the defendant, reject the claim or the appeal. The costs shall be apportioned as if the claim has been withdrawn.

6. The decisions concerning security for costs can be made by the court in a closed session. Parties can appeal the decisions.

Art. 8. The court, upon the defendant's request, shall order that the latter's costs be covered by the security deposit. The request ought not to be made later than one month from the time when the judgement in the case became enforceable. If the request has not been made, the court shall return the amount of the security to the claimant (upon the claimant's request). If no costs have been awarded to the defendant, the court shall order that the security amount be returned to the group representative immediately after the judgement in the case became enforceable.

Art. 9.1. The court shall decide on admissibility of a group claim and on admissibility of group litigation; if the requirements for group litigation have not been fulfilled the claim shall be rejected.

2. Parties can appeal the decision on admissibility of group litigation, as well as the decision rejecting the claim.

3. The same legal consequences to those which follow bringing of a group claim shall apply to the same claims brought individually by group members within six months from the time when the group claim was rejected.

Art. 10.1. After the decision on admissibility of group litigation has become enforceable, the court shall issue a decision commencing litigation. The decision shall contain information on the court, the subject of the claim, information for potential group members including the announcement that they can join the group by issuing a statement to the group representative within two months from the date of publication of the decision (joining the group after the two months' period has expired is impossible), and information on the remuneration of the lawyer.

2. The decision shall be published in the Judicial and Economic Monitor (*Monitor Sądowy i Gospodarczy*), as well as in the press if the court considers it desirable. The publication is not necessary if it is clear from the circumstances that all the potential group members already issued statements on joining the group.

Art. 11. The statement on joining the group shall contain the claim, the circumstances justifying it, circumstances justifying group membership, and it shall present evidence. The group representative shall make a list of all those who joined the group and deliver it to the court, attaching all the statements of group members. The court delivers the list together with the claim to the defendant.

Art. 12.1. The moment of making the statement on joining the group commences the relationship of two parties to litigation between the group member and the defendant, as far as the subject of the claim is concerned.

2. A person who before the group claim has been brought has brought a claim which could be covered by the group litigation can join the group at any time until the decision concluding the first instance proceedings. In such a case the court ends the proceedings in the individual case between the said person and the defendant.

Art. 13. The defendant may contest group membership of any group (or sub-group) member during the time period specified by the court, not shorter than one month.

Art. 14.1 The claimant bears the burden of proof as regards group membership in cases concerning pecuniary claims. In other cases mere probability is sufficient to justify group membership.

2. The claimant may request a group member to provide additional explanation and evidence within a specified time period.

Art. 15.1. After the expiry of the period prescribed by the court (not shorter than one month) from the date of delivery to the claimant of the defendant's statement contesting group membership of group members, the court shall make a decision on the membership of the group. The court may make this decision in a closed session. Parties cannot appeal the decision.

2. After the decision mentioned in paragraph 1 has been made, a statement by a group member that he or she leaves the group is ineffective.

16.1. Upon a request by more than half of the group members the court may change the group representative. The request shall specify the new group representative and shall contain his or her consent to become the group representative. The court shall make the decision on the appointment of the new representative in a closed session.

2. Change of the group representative does not entail an expiry of the representative mandate awarded in the case.

3. In case the request to change the group representative is made after the judgement concluding the case was adopted, the period for appeal cannot expire earlier than two weeks from the time when the decision mentioned in paragraph 1 became enforceable.

Art. 17.1 Withdrawal or reduction of the claim by the group representative requires consent of more than a half of the group members.

2. The court shall declare any concluded settlement unacceptable if it is contrary to law or to good faith, if it aims at bypassing the law, or if it significantly breaches the interests of group members.

Art. 18. A group member may be required to testify during proceedings if such a need arises.

Art. 19.1. The judgement shall mention all the group members.

2. The judgement awarding pecuniary compensation shall specify the amounts due to each group (sub-group) member.

Art. 20.1. If the group representative is required to cover the costs of the litigation, he or she may cover these partly using the security for costs given by the group members.

2. Lawyer's remuneration can be specified as a percentage of the amount awarded to the group.

Art. 21. An enforceable judgement has legal effects for all the group members.

Art. 22. The execution title to damages awarded to each member of the group (sub-group) is the judgement containing the specification of these damages.

Art. 23.1. In cases concerning non-pecuniary claims, the execution of the awarded claim shall commence upon request of the group representative.

2. If the awarded non-pecuniary claim has not been satisfied within six months from the time when the judgement became enforceable, and during this time the group representative did not request commencement of the execution, each group member can request execution.

Art. 24. Issues which have not been addressed in this Act shall be regulated by the provisions of the Code of Civil Procedure. However, the following Articles of the Code shall not apply: 7, 8, 76 – 83, 117 – 124, 194 – 196, 204, 205, 207.3, 425 – 505.14.

Art. 25. In the Act of 28 July 2005 on court costs in civil cases (*Dziennik Ustaw* (journal of laws) No. 167, item 1398, with later amendments), the following amendments shall be introduced:

1) In Art. 15: the full stop shall be replaced with a comma, and the following words added:

“and in group litigation: from 100 PLN to 10.000 PLN”.

2) In Art. 13: the following shall be added as paragraph 2:

“2. The proportionate fee in cases involving pecuniary claims sought in group litigation is 2% of the amount of the claim, however not less than 30 PLN and not more than 100.000 PLN.”

3) In Art. 26.1, the following shall be added as point 7:

“protection of non-pecuniary claims sought in group litigation”

Art. 26.1. The court shall specify the court fee when it makes a decision on list of the members of the group, taking into account the sum of the individual claims of group members.

2. In group litigation the following provisions of the Act mentioned in Art. 25 shall not apply: art. 100 para. 2, art. 101 – 103, 105, 107, 109 – 112.

Art. 27. The Act shall come into force 6 months from the date of publication.