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SANCTIONS FOR ABUSE OF PROCEDURAL RIGHTS IN POLISH CIVIL PROCEEDINGS

The abuse of law phenomenon, including cases of abusing procedural law, has been attracting the attention of legal scholars and practitioners for years, legal traditions or experience of individual states notwithstanding. The definition of abuse of procedural rights in Polish civil proceedings has been tied to the obligation of related parties and participants to proceed in conformity to the principle of fairness (honeste procedere). Classifying a specific action as abuse of procedural rights should trigger a forceful judiciary response. Two types of sanctions have been provided for as applicable in judicial proceedings wherein conduct qualifiable as violation of procedural law has been identified: litigatory and fiscal sanctions, respectively.

Applied immediately upon discovery, litigatory sanctions have been designed to counteract adversely evaluated actions engaged in by parties to proceedings. They are enforced against specific processual institutions (such as a motion to exclude a judge, or complaint filed contrary to its intended purpose). Upon discovery of such a procedural measure, its legal effect is nulled. The other sanction type is primarily quasi-penal in nature. In the final trial resolution phase, parties may face specific financial consequences (such as a fine or obligation to reimburse any legal fees and expenses, the outcome of proceedings regardless).

Key words: Abuse of law; Abuse of procedural rights; Civil proceedings; Sanctions for the abuse of law; Litigatory sanctions – ineffectuality of a processual measure; Fiscal sanctions – fine or obligation to cover any legal fees and expenses.

1. INTRODUCTION

The abuse of law concept is a multifaceted theme with multiple cultural and axiological references.¹ Progressive rise in the complexity of legal relations, increasing societal awareness, ongoing changes in civic mentality, and the influence of other non-normative factors all contribute to the growing phenomenon of individuals abusing their authority in ways opposing its original purpose. The use of law – specific provisions of the law – inconsistently with the legislator's intent, and/or with the science of law or legal practice, while responded to disparagingly, continues to be repeated by one entity after another, all driven by desire to exercise own rights and interests before courts of law. The phenomenon of abusing law, procedural law included, has been attracting the attention of scholars of law for years, the legal tradition or experience of individual states notwithstanding, the concept itself scrutinised by civil, criminal² and administrative law specialists alike.

Individual states have been attempting to resolve the issue through assorted solutions on the normative, doctrinal, and/or case law-related level. The above justifies comparative legal studies, and reaching for the experience of other countries and legal systems basing on different goals and assumptions. Some legal orders apply constitutional-level regulations, while others reach for regulations based on general clauses concerning abuse of procedural rights – or regulations wherein doctrine and case law are combined to form a concept of procedural law abuse determined by the interpretation of specific provisions. Such reflections are observable in European and non-European legal orders alike.³

A comparison of regulations and legal practice across German-speaking countries with regard to procedural law abuse yields a full array of solutions – from complete absence of norms, the concept rejected both in doctrine and case law (Austria), to attempts at establishing the institution in doctrine through a somewhat stunted regulation (Germany), and rules as elaborate as they are comprehensive (Switzerland). In principle, legislations of French-speaking countries include detailed regulations concerning the abuse of procedural rights. Legal orders of Iberian Peninsula countries, on the other hand, are rather restrained in terms of regulating the

¹ J. Kaczor, "Nadużycie prawa i obejście prawa w ujęciu teoretycznoprawnym", *Przeciwdziałanie nadużyciu uprawnień procesowych w postępowaniach sądowych* (ed. J. Kosonoga), Warsaw 2022, 30.

² Given the nature of regulations involved, criminal law proceedings are considerably more cautious and restrained when it comes to procedural law abuse.

³ M. Taruffo, "Abuse of Procedural Rights: Comparative Standards of Procedural Fairness", (ed. M. Taruffo), *Kluwer Law International*, The Hague – London – Boston 1999, passim.

concept in question.⁴ Be that as it may, all share the assumption of the judiciary and parties to a case being obliged to conform to rules of honest and loyal proceedings, in a reflection of the *bona fides* substantive law concept.⁵

While responded to in Polish adjudication on multiple occasions, the phenomenon of procedural law abuse has only seen any legislative interference several years ago, prompting lawyers to seek answers to questions regarding the actual essence behind abuse of law, and sanctions tying in with individual parties' conduct considered undesirable for reasons of the underlying purpose, instrumentalization of procedural rules or institutions, or processual responsibilities.

It goes without saying that classifying a specific act as abuse of procedural rights should trigger a forceful judiciary response. The question remains open as to whether and what kind of judicial measures catalogue ought to be set up in a procedural act of law, and how far-reaching solutions incorporated into procedural law should and could be. The purpose of this paper is to showcase the Polish experience, including a catalogue of legal solutions and the effectuality of sanctions designed to prevent and curb forms of parties' conduct qualified as abuse of procedural authority.

2. ABUSE OF PROCEDURAL RIGHTS IN POLISH CIVIL PROCEEDINGS

Early analyses of the phenomenon of law abuse in Polish civil proceedings date back to the 1930s. Already then, it was ascertained that "*while it is conceivable that parties do not apply the judicial process form for non-procedural purposes and refrain from using subversive measures in court proceedings, certain ways of handling proceedings or the use of certain measures should in themselves be considered immoral*".⁶ It was pointed out that untethered capacity for initiating and conducting civil litigation can open doors to abuse of procedural authority.⁷ Yet the idea of codifying the prohibition of procedural authority abuse was abandoned,⁸

⁴ A. Grebieniow, "Nadużycie uprawnień procesowych w ustawodawstwach innych państw", *Przeciwdziałanie nadużyciu uprawnień procesowych w postępowaniach sądowych* (ed. J. Kosonoga), Warsaw 2022, 46.

⁵ K. Gajda-Roszczyńska, "Nadużycie prawa w europejskim prawie procesowym cywilnym", *Nadużycie prawa procesowego cywilnego* (eds. P. Grzegorzczak, M. Walasik, F. Zedler), Warsaw 2019, 524.

⁶ M. Allerhand, *Podstęp w procesie*, Lviv 1907, 326.

⁷ E. Waśkowski, *Podręcznik procesu cywilnego*, Vilnius 1932, 169.

⁸ The introduction of a regulation obliging parties to exercise their rights in conformity to the goodwill principle was considered in the 1960s. K. Piasecki, "Nadużycie praw procesowych przez strony", *Palestra* 11/1960, 22.

the burden of developing the concept as such shifted onto case law.⁹ A fragmented approach to the phenomenon of procedural law abuse prevailed for years, financial sanctions tied to cost of proceedings-related rulings the most extreme measure applied.¹⁰ It was, however, pointed out time and again that tolerance for parties taking advantage of their rights in any way they see fit is hardly reconcilable with the right to fair trial protected under the Constitution – or with international law standards.¹¹ In informal terms, the injunction on abusing abuse authority was derived from the essence (purpose) of procedural law, right to fair trial, and principles of civil proceedings – rules of formalism and due process in particular.¹²

A definition of law abuse (abuse of procedural rights) was only incorporated into Polish law in 2019,¹³ i.e. once jurisprudence had developed specific measures to prevent the abuse of procedural rights. The definition has been linked to the parties and participants' duty of conforming to the rule of fair judicial proceedings (*honeste procedere*).¹⁴ Pursuant to Article 4¹ of the Code of Civil Procedure,¹⁵ "*parties or participants to proceedings shall not make use of any entitlement laid out in the rules of procedure contrary to the purpose for which it has been established (abuse of procedural rights)*". The provision applies to all rights without any restriction or exclusion.¹⁶ The catalogue of procedural actions classifiable as procedural law abuse is open, remarkably broad and innumerable.¹⁷ Courts of law shall in each case determine the desired processual purpose achievable as a

⁹ Supreme Court judgement of May 23rd 2013, Ref. No. II CSK 250/12, OSNC 1/2014, item. 8; Supreme Court resolution of December 11th 2013, Ref. No. III CZP 78/13, OSNC 9/2014, item 87; Supreme Court judgement of July 27th 2018, Ref. No. V CSK 384/17, LEX No. 2525421.

¹⁰ J. Gudowski, "Nadużycie prawa procesowego cywilnego w postępowaniu rozpoznawczym (in ampliore contextu)", *Nadużycie prawa procesowego cywilnego* (eds. P. Grzegorzczuk, M. Walasik, F. Zedler), Warsaw 2019, 27.

¹¹ K. Osajda, "Nadużycie prawa w procesie cywilnym", *Przegląd Sądowy* 5/2005, 67.

¹² T. Cytowski, "Procesowe nadużycie prawa", *Przegląd Sądowy* 5/2005, 86.

¹³ Law of July 4th 2019 amending the Code of Civil Procedure Law and selected other laws (*Journal of Laws* 2019, item 1469).

¹⁴ K. Weitz, "Nadużycie „prawa” procesowego cywilnego", *Polski Proces Cywilny* 1/2020, 11.

¹⁵ Code of Civil Procedure Law of November 17th 1964 (uniform text: *Journal of Laws* 2023, item 1550, as amended). Hereinafter referred to as "the CCP".

¹⁶ E. Gapska, "Przeciwdziałanie nadużyciom prawa procesowego w znowelizowanym Kodeksie postępowania cywilnego. Cz. I – Klauzula generalna", *Monitor Prawniczy* 15/2019, 818.

¹⁷ R. Obrębski, "Nadużycie uprawnień procesowych w zakresie środków zaskarżenia w postępowaniu cywilnym", *Nadużycie prawa procesowego cywilnego* (eds. P. Grzegorzczuk, M. Walasik, F. Zedler), Warsaw 2019, 147.

result of action taken by the given party. Subsequently, the purpose behind the given processual institution shall be related to the party's actual goal. To that end, the intent and objective individual entities were driven by shall be assessed. Finding to the effect of abuse shall involve an evaluation of exercising procedural authority to aforesaid purpose.¹⁸

Parties and participants to judicial proceedings are expected to act with integrity, fairness and loyalty,¹⁹ the absence of which perceived adversely by the Polish legislator. Procedural law abuse shall nonetheless be separated from acting *contra legem*. Actions contradicting procedural law provisions shall not be interpreted as abuse as defined by the regulation quoted herein. Abuse of law classification shall only be conferred upon action taken within the limits of law – processually lawful – yet for reprehensible reasons.²⁰

The processual design of procedural law abuse pursuant to Article 4¹ of the CCP references the general morality and good practice clause specified in Article 3 of the CCP. According thereto, parties and participants to proceedings are obliged to take procedural measures in conformity to rules of morality and good practice, provide truthful clarifications regarding any circumstances of the case without omission, and give evidence as required.

Norms ensconced in Article 3 and Article 4¹ of the CCP, respectively, are fundamentally different. The former has been phrased in the form of an order, the latter – of a prohibition. When pondering the connection between the two, it becomes significant that while Article 3 of the CCP commands that procedural measures be taken in conformity to rules of morality and good practice, Article 4¹ of the CCP alludes to conduct involving the use of authority extended in proceedings-related regulations in ways incompatible with the purpose to which they were established.

Aforementioned differences notwithstanding, it is notable that the concept of abusing procedural rights has in Polish law been linked to specific conduct of parties to judicial proceedings – which conduct, despite conforming to formal requirements listed in procedural law, shall in specific circumstances be disqualified as found to be contradicting ethical standards and/or principles of procedural law. Conversely, procedural law abuse shall not relate to measures taken by the judiciary.²¹

¹⁸ T. Zembrzusi, "Nadużycie prawa procesowego de lege lata", *Przeciwdziałanie nadużyciu uprawnień procesowych w postępowaniach sądowych* (ed. J. Kosonoga), Warsaw 2022, 156.

¹⁹ A. Łazarska, *Rzetelny proces cywilny*, Warsaw 2012, 535.

²⁰ A. Kubas, "Nadużycie prawa procesowego – próba oceny ostatnich zmian legislacyjnych", *Palestra* 11–12/2019, 169.

²¹ M. G. Plebanek, *Nadużycie praw procesowych w postępowaniu cywilnym*, Warsaw 2012, 545.

3. TYPES OF SANCTIONS APPLIED IN CASE OF PROCEDURAL LAW ABUSE

While defining the essence of procedural law abuse or identifying the need for prohibiting related conduct raises no doubt, defining appropriate sanctions for breaching procedural law has proven to be a major difficulty.²² Matters giving rise to differences in the legal scholars' community include the question of whether establishing a general procedural sanction is expedient and at all possible. Sanctions diverse in form and nature – repressive and preventive alike – can certainly be considered. It is noteworthy that Article 4¹ of the CCP only comprises a definition of procedural law abuse, the provision listing no sanctions whatsoever, respective regulations having been shifted to other Code of Civil Procedure provisions.

Isolated sanctions are currently under consideration in the context as well – as response measures restricted to specifically defined procedural authority abuse cases only. Polish law provides for two types of sanctions applicable in judicial proceedings wherein conduct qualifiable as violation of procedural law has been identified: litigatory and fiscal sanctions.

Applied immediately upon discovery, litigatory sanctions are designed to counteract adversely evaluated actions engaged in by parties to proceedings. They are enforced against specific processual institutions. Upon discovery of such a procedural measure, its legal effect is nulled. The other sanction type is primarily quasi-penal in nature. In the final trial resolution phase, parties may face specific financial consequences. The disposition of provisions concerning the two sanction types is founded on separate hypotheses – the court may apply both mechanisms to a single act qualified as procedural rights abuse.

4. LITIGATORY SANCTIONS

The general mechanism of penalising adversely evaluated actions engaged in by parties to judicial proceedings can be of varied design. One could embrace the procedural measure ineffectiveness construct; consider the mechanism of conferring non-existent (*non-existens*)²³ measure status upon the action in question; reference the institution of proceedings invalidity,²⁴ or develop "*non-typical inadmissibility*"²⁵ notions. In Polish pro-

²² T. Ereciński, "Nadużycie praw procesowych w postępowaniu cywilnym, Tezy i wstępne propozycje do dyskusji", *Nadużycie prawa procesowego cywilnego* (eds. P. Grzegorzczak, M. Walasik, F. Zedler), Warsaw 2019, 18.

²³ J. Mokry, "Czynności procesowe podmiotów dochodzących ochrony praw w postępowaniu cywilnym", *Acta Universitatis Wratislaviensis. Prawo* 1507/1993, 56.

²⁴ T. Zembrzusi, *Nieważność postępowania w procesie cywilnym*, Warsaw 2017, 157.

²⁵ T. Ereciński, 17.

cedural law, the latter has prevailed. The judiciary have been equipped with a tool designed to eliminate procedural outcomes of dishonest, undue and disloyal conduct.²⁶ In this particular case, the intent involved improvements to the swiftness of proceedings in their entirety.²⁷ In contrast to the sanction of dismissal (traditionally linked to inadmissibility), the Law provides for an outcome of "*leaving in the case file with no further action*".

When reaching for litigatory sanctions, the court shall not take action considered a typical aftereffect of a measure applied in a way compatible with its intent, the underlying action not influencing further proceedings in any way. The party's demand will be recognised as not having been filed at all.²⁸ In other words, outcomes expected by the party who had decided to take reprehensible action shall be ignored by continuing with proceedings as if the action had never been taken. This construct breaks with a solution well-established in civil proceedings, assuming the judicial duty to rule on every motion filed by a party or participant to proceedings.²⁹ The assumption that each and every motion of a party thereto should be reflected in a positive or negative decision measure has prevailed in civil proceedings to date.

The litigatory sanction is isolated in nature, applying to four procedural measures initiated once a specific demand has been filed: 1) motion to exclude a judge for the exclusive reason of circumstances associated with an evidence-related judicial ruling, or resubmitted with regard to the same judge and identical underlying circumstances (Article 53¹ of the CCP); 2) resubmitted motion for legal aid, i.e. for the appointment of an attorney or legal advisor *ex officio*, should the party rely on circumstances identical to those which had justified the previous motion having been rejected (Article 117² of the CCP); 3) motion to rectify, supplement or interpret a judgement, filed with exclusive intent to delay proceedings, thus interpreted once a second or successive application has been submitted by the same party in respect of the same judgement (Article 350¹ of the CCP); 4) second or successive complaint filed by the same party in respect of the same decision, and/or a complaint filed in respect of a decision issued in the aftermath of actions resulting from the same party having filed a previous complaint (Article 394³ of the CCP).

²⁶ K. Weitz, 35.

²⁷ M. Dziurda, "Kierunki wykładni obowiązujących przepisów k.p.c. o nadużyciu prawa procesowego", *Przeciwdziałanie nadużyciu uprawnień procesowych w postępowaniach sądowych* (ed. J. Kosonoga), Warsaw 2022, 189.

²⁸ T. Zembrzuski, (2022), 165.

²⁹ A. Jakubecki, "Sankeje za nadużycie uprawnień procesowych w Kodeksie postępowania cywilnego", *Palestra* 11–12/2019, 194.

This catalogue is limited to cases specifically listed therein, the limitation strictly applied and prohibiting any analogies to other actions taken by parties and unspecified by law – as it has been accepted that extending the non-effectuality sanction of *"leaving in the case file with no further action"* to circumstances which have not been clearly regulated would make procedural law unpredictable, non-transparent and uncertain.³⁰

Classifying a procedural action as procedural authority abuse and leaving a motion unexamined requires no separate decision or justification. Respective judicial notification responsibilities have been regulated in detail as well. The party to proceedings will be notified of the inadmissibility of a motion (to exclude a judge; to appoint an attorney or legal advisor; to rectify, supplement or interpret a judgement) or complaint once only. The solution is designed to relieve the court of its duty to respond to successive actions taken by a party whose intent is to obstruct proceedings as a result of continuing to take measures repeated and rejected.

Prima facie it may seem that applying the sanction of leaving a respective motion described in a pleading unexamined is incompatible with the due process principle, potentially giving rise to a risk of the party being deprived of the capacity to protect its rights.³¹ Yet judicial practice has not revealed cases of procedural sanctions having been applied in a grossly defective manner once it was established that a party had abused its procedural rights. Courts tend to resort to the mechanism with caution and restraint. Arbitrariness or excess discretion in applying a severe procedural sanction should not be feared.

5. FISCAL SANCTIONS

General litigatory sanction apart, the Polish legislator has sought *"to establish a sanction non-litigious in nature (legal cost- and interest-related), effective in detailed and general prevention"*,³² with intent to introduce a mechanism which – while incapable of eliminating procedural outcomes of actions recognised as procedural rights abuse – should encourage parties to cease and desist when it comes to disloyal, dishonest or undue conduct in judicial proceedings.

³⁰ A. Kubas, 170.

³¹ T. Zembrzuski, "Pozbawienie możliwości obrony praw strony w orzecznictwie Sądu Najwyższego", *Jus est a iustitia appellatum. Księga Jubileuszowa dedykowana Profesorowi Tadeuszowi Wiśniewskiemu* (ed. M. Tomalak), Warsaw 2017, 573.

³² Justification of the draft Law amending the Code of Civil Procedure Law and selected other laws – (document No. 3137, *Sejm* of the 8th parliamentary term), <https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=3137>, 33.

Injunctions in response to procedural rights abuse do not assume uniformity of fiscal consequences, as it would be impossible to define a single, unvarying, adequate sanction applicable to diverse symptoms of such violations. As a result, Polish procedural law has been expanded to include as many as four potential procedural mechanisms. Pursuant to Article 226² §2 of the CCP, should the court find that a party has abused procedural rights, it may, in its final ruling in the case: 1) fine the party found guilty of abuse; 2) regardless of the case outcome, account for proportionate delay in trial caused by aforesaid procedural law abuse, and order the party at fault to reimburse a part of the costs of proceedings in excess of the amount indicated by the case outcome, up to and including the full costs of proceedings; 3) on request of the opposing party: a) award costs of proceedings due from the party at fault, the amount increased to reflect the upsurge in the opposing party's case-related workload as a result of abuse of procedural rights;³³ b) increase the interest rate on the amount awarded from the party whose abuse of procedural rights caused a delay in trial, to reflect the time of delay.³⁴ While the fiscal sanction catalogue is limited to cases specifically listed therein (enumerated),³⁵ it does not exclude the capacity for claiming compensation from the opposing party, pursuant to general rules of remedying damage caused by procedural rights abuse.

Pursuant to Article 226² §1 of the CCP, whenever a party's conduct shall – in view of the circumstances of the case – suggest that procedural law has been abused, the court shall instruct such party with regard to being potentially subjected to aforementioned measures. Instructing the party potentially abusing procedural law is a *sine qua non* condition for fiscal sanctions to be applied, the instructions preventive rather than sanction-related in nature. Their intent is to make the party in question aware of a breach of the *honeste procedere* principle, and the risk of facing consequences as a result; that said, any such consequences shall only be defined once proceedings are closed. The measure of instructing the party should be sequential, i.e. applied once a specific breach of rights has been established. The party gains relevant knowledge as a result, learning of the possible consequences of specific actions. A rational analysis of aforesaid information ought to result in the party discontinuing questionable actions, and prevent further conduct diagnosed as procedural rights abuse.³⁶

³³ By no more than twice the original amount.

³⁴ By no more than twice the original rate.

³⁵ Fiscal sanctions arise from other regulations as well. Article 103 of the CCP provides for the option of ordering the party at fault to reimburse all and any costs resulting from negligent and/or manifestly improper conduct.

³⁶ T. Zembrzusi, (2022), 179.

Once it is found that cautioning the party at fault has yielded a desirable outcome, the court should refrain from applying sanctions in its final ruling in the case. Should, however, the party persist in pursuing measures diagnosed as procedural rights abuse with no regard for judicial instructions, individual sanctions ought to be applied.³⁷ A decision regarding the application of fiscal sanctions forms part of the final ruling in the case.

The use of the word "*may*" as it appears in Article 226² §2 of the CCP assumes the discretionary nature of judicial assessment with regard to resorting to measures specified therein. The successive decision to apply fiscal sanctions, their gradation and severity should account for the delay caused by action of the party at fault. Sanctions can be applied in cumulation, the court's assessment pending. The court shall be obliged to expand its final ruling to include a detailed explanation of the exact conduct with regard to which the party had been instructed, and which in the opinion of the court had met procedural law abuse criteria. The oppressive nature of the analysed institution justifies a conclusion that the use of sanctions ought to be prudent, any doubts resolved in favour of the party potentially exposed to adverse consequences of processual measures taken.

6. IN CLOSING

The judicial process can operate properly and smoothly within a specific context and in conformity to exact rules, the obligation to respect the law necessitating the existence of formalism linked to a duty to interpret legal provisions strictly and with great precision, and apply regulations recognised as the source of rights extended to all parties concerned.³⁸ It seems that dishonest, disloyal and/or undue conduct on behalf of parties and/or participants to judicial proceedings should be mainly prevented by formalism in procedural law.³⁹ The secondary institution of procedural law abuse might be worth reaching for, said institution arising from a belief that procedural law ought to be moral, just, and reflective of a certain axiological system.⁴⁰

In consequence, the very existence of the norm ensconced in Article 4¹ of the CCP or the *honeste procedere* postulate does not warrant due process or integrity in parties or participants' conduct. The presence of an order or prohibition should tie in with a system of sanctions adequate and effective in equal measure, the latter's absence rendering the ban on abus-

³⁷ A. Jakubecki, 190.

³⁸ T. Zembrzusi, (2022), 151.

³⁹ T. Zembrzusi, „Formalizm procesowy a skutki wadliwego oznaczenia pisma procesowego spełniającego wymagania środka zaskarżenia”, *Przegląd Sądowy* 1/2018, 5.

⁴⁰ T. Ereciński, 11.

ing authority illusory, precluding due judicial proceedings as a result. The use of sanctions for procedural law abuse is relatively rare in Polish judicial practice. Notwithstanding the above, it may well be assumed that their codification has been and will to a certain extent be restricting action taken by parties for reasons and to purposes other than those listed in procedural legislation. It can be expected that the catalogue of provisions explicitly introducing further litigatory sanctions for specific conduct constituting procedural law abuse will be expanded in the not-too-distant future.⁴¹

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⁴¹ M. Dziurda, (2022), 221.

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