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LIMITATION OF THE TRIAL TO INDIVIDUAL OBJECTIONS OR PRELIMINARY ISSUES

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SUMMARY

The dissertation discusses the issues raised by the author in her quest to find a way to speed up the proceedings and make it more efficient in a situation when the court sees a problem that can be taken under consideration before hearing the whole case. Certain allegations (objections) can lead directly to dismissing the claim while in many cases court would rather hear the whole case with witnesses and court specialists.

The author points out case law that supports far more effective way of dealing with civil cases and underlines the key role of judge who can find the issues at stake that can be solved before and even instead of the hearing of evidence. In order to do so, judge must carefully examine the case and determine, on an early stage of proceeding, what are the main issues at stake and what should be taken under consideration during the trial. By selecting one issue and focusing on that particular matter judge can determine if the claim is justified or ready to dismiss on that certain base. Trail can be also limited to only one objection of the defendant.

If the judge determine that the issue is justified by plaintiff, court can give preliminary judgment, confirming that claims were justified. This judgment can be afterwords subject of an appeal. When the Appeals Court upheld the decision of the court of first instance then this court will therefore conduct the hearing of evidence. Parties thou will have certainty that key issue will not be revoked and can be sure that they can invest money and resources in the discovery phase of the trail.

Provided judge finds the claim unjustified regard to that issue at stake – court will give final judgment but without hearing the evidence. To do so, court should notify parties upon the article two hundred and twenty of the Code of Civil Procedure. In the view of the author this provision can increase the efficiency of Polish civil procedure. Despite being rooted in the Code of Civil Procedure from its early days without any change, this instrument is not fully recognized by judges and often applied without proper consideration.

The subject of considerations is also to discuss the problem of the collision of procedural values and the practice of improper management of proceedings, In this context the regulation of article two hundred and twenty of the Code of Civil Procedure can be remedy for the indicated problems of the judiciary. Author presents the history of regulation and compares it with the institution closest to the existing legal systems - the regulation of the German

procedure. Subsequently, the regulation is presented against the background of the rules of conduct and in the context of formal and material management of the proceedings.

The author also presents the correct way to limit the trial, presenting various doubts related to it. Moreover, discusses the form of a trial limitation, the proper timing, the possibility of revoking the limitation, and a comparison of the institution with regulations with a similar purpose. The author tries to answer the question of how to limit the trial so that this regulation can achieve its task.

The dissertation also analyses the correct selection of charges and preliminary issues to which the trial may be limited. The author – herself being a judge – analyses the case law from 20th and 21st century to prove that if this provision is carefully applied and the subject matter is well chosen, this can have a positive impact on both the length of cases and its economic burden for the parties. However, as case law shows on various examples, judges often do not apply this provision which leads to procedural mistakes or results in long and costly trials. In author's opinion not to often Court finds the case to be sufficiently clarified to be resolved without any hearing being scheduled. Yet the aim of this dissertation is to change this scope.

Another important finding of this thesis is that application of article 220 of the Code of Civil Procedure in many situations can lead to settlement. In numerous cases parties were in a dispute because of one issue but can reach a conclusion upon other matters at stake. Therefore, by solving key subject of the trail judge can open wide negotiations between the parties or facilitate it due to the resolution of the main allegation. In many cases the dispute can be afterwords settled during mediation.

The thesis also presents comments on the tendency of the legislator to refer cases for consideration at closed session. From this point of view, it is necessary to assess whether the court had the right to limit the hearing of the case in a closed session. It seems that, despite the need, there is no such possibility. The author pointed out the possibility of using article 220 of the Code of Civil Procedure to achieve the goals that the legislator tries to achieve by other means, and these activities are met with criticism.

This dissertation is an attempt at a systematic and comprehensive approach to the regulation of article 220 of the Code of Civil Procedure. It seems that the potential inherent in this regulation is not perceived in doctrine and jurisprudence. Also, the legislator, creating new methods of organizing proceedings, does not devote sufficient attention to the possibilities of

adapting the provision of Article 220 c.p.c. to develop the practical use of the potential inherent in this institution.

Modern civil procedure requires progressive approach to key issues and bold decisions to limit the hearing to only one issue and impose initial judgments in order to facilitate long and costly trials. This is far more effective way of case management. Rational and non-accidental use of the provision of article 220 of the Code of Civil Procedure has a direct impact on the economy of proceedings.