

ANNA ZEMANDLOVA,^a KRZYSZTOF DROZDOWICZ^b

DEADLINE FOR EXAMINING AN APPLICATION FOR SECURITY IN CZECH AND POLISH CIVIL PROCEEDINGS

TERMIN ROZPOZNANIA WNIOSKU O UDZIELENIE ZABEZPIECZENIA W CZESKIM I POLSKIM POSTĘPOWANIU CYWILNYM

The article aims to analyse the issue of the deadline for examining an application for security in Czech and Polish civil proceedings. The comparative law method was used in the work. The publication compares normative solutions regarding the deadline for examining an application for security in the Czech Republic and Poland. The article presents an analysis of special solutions used by the legislator in selected cases where it is necessary to schedule a hearing or accelerate the consideration of an application for security. The issue of the consequences of considering an application for security in violation of the deadline set by the legislator is raised. The research conducted allowed the following conclusions to be drawn. In both Polish and Czech civil proceedings, security proceedings are an independent part of the proceedings, separated from enforcement proceedings. In both legal systems, the deadline for examining an application for security is advisory, and exceeding it does not result in any sanctions. In Czech civil proceedings, applications for security are not examined at a hearing, while according to Polish regulations it is obligatory in some cases. In the Czech Republic, there are two types of special security measures for the immediate protection of children and against domestic violence. Polish legislation seems to be more flexible and better protects the procedural rights of the parties than the Czech Code of Civil Procedure. The presented analysis may contribute to the discussion on possible changes in the provisions of civil procedural law in Poland and the Czech Republic.

Keywords: security proceedings; civil proceedings; court; Czech law; Polish law

Celem artykułu jest analiza kwestii terminu na rozpoznanie wniosku o udzielenie zabezpieczenia w czeskim i polskim postępowaniu cywilnym. W pracy wykorzystano metodę porównawczą. W publikacji porównano rozwiązania normatywne dotyczące terminu rozpoznania wniosku o udzielenie zabezpieczenia w Czechach i w Polsce. W artykule przedstawiono analizę rozwiązań szczególnych stosowanych przez ustawodawcę w wybranych przypadkach, w których konieczne jest wyznaczenie rozprawy lub przyspieszenie rozpatrzenia wniosku o zabezpieczenie. Poruszo-

^a Masaryk University, Brno, Czech Republic / Uniwersytet Masaryka w Brnie, Czechy
Anna.Zemandlova@law.muni.cz, <https://orcid.org/0009-0008-8100-0868>

^b Adam Mickiewicz University, Poznań, Poland /
Uniwersytet im. Adama Mickiewicza w Poznaniu, Polska
k-a-d@amu.edu.pl, <https://orcid.org/0000-0002-3016-2663>

no kwestię skutków rozpatrzenia wniosku o zabezpieczenie z naruszeniem wyznaczonego przez ustawodawcę terminu. Przeprowadzone badania pozwoliły na wyciągnięcie następujących wniosków. Zarówno w polskim, jak i czeskim postępowaniu cywilnym postępowanie zabezpieczające jest samodzielną częścią postępowania wyodrębnioną od postępowania egzekucyjnego. W obu ustawodawstwach termin na rozpoznanie wniosku o zabezpieczenie ma charakter instrukcyjny, a jego przekroczenie nie powoduje zasadniczo żadnych sankcji. W czeskim postępowaniu cywilnym wnioski o udzielenie zabezpieczenia nie są rozpoznawane na rozprawie, podczas gdy według polskiej regulacji w niektórych przypadkach jest to obligatoryjne. W Czechach funkcjonują dwa rodzaje specjalnych środków zabezpieczenia w celu natychmiastowej ochrony dzieci oraz przed przemocą domową. Polskie ustawodawstwo wydaje się bardziej elastyczne i lepiej chroni prawa procesowe stron niż czeski kodeks postępowania cywilnego. Przedstawiona analiza może stanowić głos w dyskusji na temat możliwych zmian w przepisach prawa procesowego cywilnego w Polsce i Czechach.

Słowa kluczowe: postępowanie zabezpieczające; postępowanie cywilne; sąd; czeskie prawo; polskie prawo

I. INTRODUCTION

Provisional protection is an essential part of the modern civil procedure. It enables effective enforcement and the preservation of rights, and prevents (further) harm prior to the commencement of proceedings or pending final judgment.¹ The principle of effective protection is the guiding principle from which a number of other principles are derived. In fact, the timely and effective enforcement of the law is the main reason for the existence of security or preliminary proceedings (Hrnčířík, 2016, p. 27).² Consequently, these proceedings must be tailored to this principle at every stage, including modified rules for application, taking evidence, or decision-making. On the other hand, safeguarding the procedural rights of persons concerned is also necessary. Each jurisdiction employs a different strategy to achieve and balance these two goals. One of the usual strategies to ensure time efficiency and timely protection of the claim is to set time limits for making a decision on the application for security or preliminary measures. On the one hand, setting deadlines is intended to discipline the court to quickly recognize an application for security or to issue preliminary measures. On the other hand, it is intended to ensure that the party can effectively implement the judgment on the merits of the case. The following paper will examine this topic from comparative point of view of two countries – Poland and Czech Republic.

¹ ELI/UNIDROIT Model European Rules of Civil Procedure, p. 331. Available at: <https://www.unidroit.org/wp-content/uploads/2021/06/English-integral.pdf>

² Different terminology is used across Europe for preliminary and protective measures, e.g., preliminary relief, preliminary measures, preservation measures, interim relief and interim orders.

II. PRELIMINARY MEASURES: CZECH REGULATION

Provisional and preliminary protection is also an integral part of the Czech civil procedure. From the beginning, the developments in this field were closely linked to Austrian and German law, where preliminary proceedings traditionally fell under the scope of enforcement (execution) law. Consequently, the Austrian *Exekutionsordnung*,³ where preliminary measures were covered, was incorporated into the Czechoslovak legal system when the Czechoslovak Republic was established in 1918. This legal framework remained in force until 1950, when it was replaced by new socialist legislation grounded on different principles and paradigms (Hrnčířík, 2016, Chap. II). In the socialist society, preliminary measures were of minimal importance, which led to a significant simplification of legislation newly incorporated into the Code of Civil Procedure of 1950.⁴ Although the basic framework of the new regulation remained similar, it maintained the original concept and principles.⁵ Basically, the same legislation was taken over to the Code of Civil Procedure, which came into force in April 1964 and has never been recodified.⁶

Currently, the basic legal framework for preliminary measures is governed by the Code of Civil Procedure, in the second part, which deals with the court activities before commencement of the proceedings (§ 74–77c). This body of rules establishes the general framework, which is complemented by the special legislation, particularly the Act on Special Judicial Proceedings,⁷ the Civil Code and the Insolvency Code.⁸

1. The general framework

As mentioned above, the Code of Civil Procedure provides the general regulatory framework of preliminary protection in the Czech Republic. This act makes it possible to apply for provisional judicial protection through a particular procedural form called a ‘preliminary measure’. It can be issued to provisionally protect the rights or claims before the final decision in the case is made. There are two situations (grounds) in which provisional measures can be taken: if the future enforcement of the claim is endangered or if it is necessary to regulate the mutual relations between the parties (participants).⁹ The provision makes no distinction between pecuniary and non-pecuniary claims.

³ Act No 79/1896 Coll., on the execution and security proceedings (execution order).

⁴ Act. No 142/1950 Coll., on the Proceedings in Civil Law Matters (the Code of Civil Procedure).

⁵ Despite many amendments, the impacts of these changes have never been entirely removed (Hrnčířík, 2016, p. 26).

⁶ Nevertheless, it has been amended many times. Act No 99/1963 Coll., the Code of Civil Procedure, as amended (hereinafter referred to as the ‘Code of Civil Procedure’ or ‘CCP (C)’).

⁷ Act No 292/2013 Coll. on Special Judicial Proceedings, as amended (hereinafter referred to as the ‘Special Judicial Proceedings Act’ or ‘ASJP’).

⁸ Act No 182/2006 Coll., on insolvency and its solutions (Insolvency Code), as amended.

⁹ See § 74/1 of the CCP.

It is important that the facts supporting either of the above-mentioned reasons (grounds) must be fully proved, whereas for proving the claim (which should be protected), the prevailing probability of its existence is enough. Thus, there is a different standard of proof for these two essential prerequisites, which is rather problematic and sometimes may cause the application to be dismissed.¹⁰

As the purpose of provisional protection is to ensure prompt judicial protection of an endangered or infringed claim or right, it should be provided as fast as possible. If judicial proceedings should, in general, be fast and effective, this is even more important in the case of preliminary proceedings. Their purpose is to remove the disadvantages associated with the length of the main proceedings (Hrnčírík, 2016, p. 28). This principle is currently implemented by several rules, including a modified process of examining the facts of the case or the setting of different time limits for the decision on the application for a preliminary measure, as explained below.¹¹ It is also important to note that it is not usual to order an oral hearing, and the right to be heard of the defendant is significantly restricted. This practice is based on § 75c/2 of the Code of Civil Procedure, which enables the court to decide on an application without hearing the parties (participants).¹² Despite the fact that the wording of § 75c/2 does not explicitly exclude ordering an oral hearing, the usual judicial practice is to decide only on the basis of written documents provided by the applicant, without hearing the defendant (Jirsa, 2016, p. 463). However, this rule and its judicial interpretation have been criticised because it may (at least in some cases) interfere with the right to a fair trial (right to be heard) guaranteed by Article 6 of the European Convention on Human Rights (the Convention) and with national constitutional law (Hrnčírík, 2016, pp. 111–116). Although the European Court of Human Rights (ECtHR) has ruled that preliminary proceedings fall within the protection of Article 6, it has accepted in some cases that modifications that help efficiency and the timely decision can be justified.¹³ In the case *Micallef v. Malta*, the Court points out:

¹⁰ § 75c/1 of the CCP (C). This concept is criticized because it requires the highest standard of proof (Hrnčírík, 2016, pp. 194–197).

¹¹ Until 1 January 1996, there were no time limits for the courts to decide. The first change brought an amendment of the CCP made by Act No 238/1995 Coll., which introduced a 24-hour time limit for the newly implemented ‘fast’ preliminary measure for the immediate protection of minors (see below). Then, a seven-day limit was introduced by Act No 30/2000 Coll., which entered into force on 1 January 2001. The explanatory note follows only vague and non-specific reasoning: Since the effectivity of the proceedings is essential, it seems necessary to introduce a seven-day time limit, which would be applicable unless *lex specialis* stipulates otherwise.

¹² § 75c/3 stipulates: ‘The decision on the application for interim measures shall be taken by the President of the Panel without a hearing of the parties.’ The constitutionality of this provision was unsuccessfully challenged several times; see the decision of the Constitutional Court of 21 November 2008, File No III. ÚS 2713/07 or decision of the Constitutional Court of 14 February 2008, File No II. ÚS 2417/07.

¹³ The Court has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (*Schuler-Zraggen v. Switzerland*, 1993, § 58; *Döry v. Sweden*, 2002, § 41; and con-

However, the Court accepts that in exceptional cases – where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6. Thus, in such specific cases, while the independence and impartiality of the tribunal or the judge concerned is an indispensable and inalienable safeguard in such proceedings, other procedural safeguards may apply only to the extent compatible with the nature and purpose of the interim proceedings at issue. In any subsequent proceedings before the Court, it will fall to the Government to establish that, in view of the purpose of the proceedings at issue in a given case, one or more specific procedural safeguards could not be applied without unduly prejudicing the attainment of the objectives sought by the interim measure in question.¹⁴

As the quoted text shows, the absence of a hearing of the defendant and the waiver of an oral hearing, if applied as a general rule, may be considered contrary to the Convention and to the national guarantees of a fair trial laid down in the Charter of Fundamental Rights and Freedoms.¹⁵ As a result, the defendant has no opportunity to be heard before the decision is taken. Moreover, he (or she) is not even aware of the pending proceedings until the decision is handed down. As Hrnčířík explains, the right to appeal is also limited because the defendant cannot challenge the decision on the basis of the facts that existed before the decision was issued (*nova*).¹⁶

One of the reasons for not giving the defendant the opportunity to be heard before the decision is issued is time efficiency. The fundamental time limits for decision-making in cases of preliminary measures is currently set by § 75c/2 of the Code of Civil Procedure.¹⁷ According to this provision, the decision on an application should be taken without undue delay and – where there is no risk arising from delay – within seven days after it was submitted. This rule should be interpreted as follows: A court primarily shall decide without delay.¹⁸ Delaying the decision should not undermine the preliminary measure or harm the rights the measure aims to protect (Čuhelová & Pondikasová, 2016, p. 260).¹⁹ Determining the appropriate timeframe depends on the case's

trast *Salomonsson v. Sweden*, 2002, §§ 39–40), in *Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb)*, updated to 31 August 2022, p. 100. http://www.echr.coe.int/documents/d/echr/guide_Art_6_eng

¹⁴ Judgment of the Grand Chamber in case of *Micallef v. Malta*, App. no. 17056/06, point 86.

¹⁵ Article 38/2 of the Charter of Fundamental Rights and Freedoms (Resolution of the Presidency of the Czech National Council of 16 December 1992 on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, Constitutional Act No. 2/1993 Coll. as amended by Constitutional Act No. 162/1998 Coll. and No. 295/2021 Coll.

¹⁶ Any fact put forward by the defendant must be 'new' because he (or she) has not had the opportunity to be heard and to present the fact in his (or her) defence (Hrnčířík, 2016, pp. 111–116).

¹⁷ The wording is as follows: 'The President of the Chamber shall decide on the application for an interim measure without delay. If there is no risk of delay, the President of the Chamber may decide on the application for preliminary measure up to seven days after it was lodged.' (Unofficial translation.)

¹⁸ Opinion of the Supreme Court of 6 June 2007, File No Cpjn 196/2006. The same conclusion also in Hrnčířík (2016, p. 198), Čuhelová & Pondikasová (2016, p. 260), Drápal (2009, p. 437) and Jirsa (2016, p. 461).

¹⁹ Jirsa (2016, p. 461) gives cases of housing as examples of when a decision should be taken without undue delay, if an applicant has no other housing alternative, etc.

specific circumstances (Drápal, 2009, p. 437). Otherwise (if there is no risk of delay), a court shall decide up to seven days from the submission of an application (Drápal, 2009, p. 437; Hrnčířík, 2016, p. 198 or Čuhelová & Pondikarová, 2016, p. 260).²⁰ As the time limits set out in § 75c/2 are instructive, their non-compliance does not affect the final decision's legality or effectiveness. Nevertheless, it may later be assessed as a delay in the overall length of the proceedings or even as disciplinary misconduct.

Furthermore, the idea of managing preliminary proceedings expeditiously is implemented by excluding the court assistance for correcting or supplementing an application (§ 75a). An application that is incorrect, incomplete (does not meet essential formal conditions), or vague, if these obstacles do not enable the court to proceed, will be rejected. The applicant is not invited to correct or complete it, as is usual in ordinary proceedings, according to § 43 of the Czech Code of Civil Procedure.

On the other hand, the imposition of an obligation to make a decision within a rather strict time limit is also criticized. The authors of the Draft of the new Czech Code of Civil Procedure,²¹ as well as some other academics (Hrnčířík, 2016, p. 198), point out that explicit time limitation is unusual from a comparative point of view because – at least countries with a similar legal culture and tradition (Germany, Austria) – have not set a specific time limit for the adoption of the decision.²² Moreover, it can lead to a reduction of the plaintiff's protection. Especially if the application is incomplete or unclear.²³ For this reason, a different approach was proposed in the Draft based on a non-specific time limit: 'The court shall decide on the application without undue delay and, as a rule, without an oral hearing. However, it shall give the defendant the opportunity to be heard on the application, unless the defendant so requests.'²⁴

It is clear that the current Czech regulation of preliminary measures definitely prefers time efficiency, which seriously limits the defendant's opportunity to be heard and challenge the decision, which is already enforceable. This situation might be considered contrary to the right to a fair trial guaranteed

²⁰ Despite the clear wording of § 75c/2, some authors recognize only a seven-day period as the only one to be observed by the courts (Hrnčířík, 2016, pp. 198–199).

²¹ The Czech version available at https://justice.cz/documents/12681/2872506/V%C4%9B-cn%C3%BD+z%C3%A1m%C4%9Br_fin%C3%A1ln%C3%AD+verze+_prosinec+2020.pdf/83cd-d87e-18c5-41e9-948e-8defa2525adb. For the reasoning of the criticism see point 485 in Draft of the new Code of Civil Procedure, pp. 433–434.

²² Draft of the new Czech Code of Civil Procedure, p. 433.

²³ Pursuant to § 75a of the Czech Code of Civil Procedure, the court is not obliged to ask the petitioner to correct the incomplete or unclear petition (§ 43 of the CCP (C) is not applicable in the preliminary proceedings). Even if it is generally desirable to grant prompt judicial protection, it is questionable whether urgent action does not make it more difficult to achieve the basic objective of preliminary protection. As the Draft Proposal of the new Czech Code of Civil Procedure states (unofficial translation): 'Speed is very important here, but it is not the only value to consider.' In the Draft of the new Czech Code of Civil Procedure, p. 433.

²⁴ For the reasoning of the criticism see point 485 in the Draft of the new Czech Code of Civil Procedure, p. 433.

by Article 6 of the Convention and by the Charter of Fundamental Rights and Freedoms.

Since preliminary measures are usually sought to ensure the fastest possible enforcement, the whole proceeding is designed to achieve this goal. According to § 171 of the CCP (C), the time limit for voluntary performance of an obligation imposed by a preliminary measure²⁵ starts from the day the court decision was delivered and is not linked to the legal force of the decision.²⁶

Unlike the appeal proceedings in the case of specific preliminary measures regulated by the Act on Special Judicial Proceedings, there is no time restraint set by the Code of Civil Procedure for the appellate court when deciding upon an appeal against the ‘general’ preliminary measure. Nevertheless, as the Czech Constitutional Court ruled in the case ref. no. IV. ÚS 736/17, the appellate courts are obliged to respect the specific nature of the proceedings and act as fast as possible (even though this obligation is not *expressis verbis* imposed by law). The appellate courts are, therefore, obliged to decide within the time limit laid down by § 75c of the CCP, even though this time limit is not primarily designed for an appeal procedure; any other conclusion would be contrary to the purpose of preliminary court protection.

2. Special regulation: The Act on Special Judicial Proceedings

It has already been noted that the regulation on preliminary measures is contained in the Czech Code of Civil Procedure and in several special acts.²⁷ One of the most important is the Act on Special Judicial Proceedings, which is the second code regulating civil procedure in the Czech Republic.²⁸ It implements two types of preliminary proceedings: preliminary proceedings in cases of domestic violence and preliminary measures for the immediate protection of minors. The reason for the separate legal regime of these ‘special’ preliminary measures is their specific purpose and the sensitive matter they address (Hrnčírík, 2016, p. 128). Details of this special legal regime, including the time limits, will be discussed in the following sections.

3. Preliminary proceedings in cases of domestic violence

As part of the legislative activities in 2006 aimed at increasing the protection of victims of domestic violence, a new civil procedural instrument – the ‘special’ preliminary measure – was introduced throughout § 76b of the Code

²⁵ Which can be three or fifteen days long. See § 160 and § 167/2 of the CCP (C).

²⁶ Unlike a court judgment, where it starts to run from the date of entry into force, see § 160 and 161 of the CCP (C).

²⁷ The special legislation should be applied prior to the general provisions set by the Czech Code of Civil Procedure.

²⁸ Until 31 December 2013, the regulation of the special preliminary measures was set by the Czech Code of Civil Procedure (mainly in § 76a and § 76b and § 75c). However, as part of the private law recodification, the regulation was subsequently moved to the newly established Act on Special Judicial Proceedings.

of Civil Procedure.²⁹ The concept of this amendment – which made it possible to evict a perpetrator from the household shared with a victim of domestic violence – was based on a modification of the general legal framework in order to achieve the specific purpose of the new legislation.³⁰

After the Act on Special Judicial Proceedings was adopted, the rules governing preliminary measures in cases of domestic violence were – with several revisions³¹ – incorporated into this new act.³² Currently, the special regulation consists of two instruments: proceedings about the application for preliminary measures against domestic violence or stalking (§ 400–409) and proceedings on its prolonging (§ 410–414).

The purpose of the special regulation relates to the value which is protected: mental and physical health and the integrity of the victim, so that it is designed to provide effective and the fastest possible protection.³³ So, the court must decide within a very short period – up to 48 hours (§ 404).³⁴ Some authors assume that the general rule, which requires the court to decide without delay (primary period, § 75c CCP – see above), also applies in domestic violence cases.³⁵ Others believe that only a 48-hour limit is relevant (Králičková, 2022, p. 357).³⁶

If the application does not meet the formal requirements and is incomplete or vague, the court is (contrary to the ‘general’ preliminary measure proceedings) obliged to invite the applicant to complete it.³⁷ In the event that missing information is not provided within the time limit to issue the decision (48 hours), or if an applicant cannot be invited complete an application, the court will reject it.³⁸ If the court does not attempt to contact the applicant in

²⁹ The main purpose of the Act No 135/2006 Coll., effective from 1 January 2007, was to improve protection of the victims of domestic violence in various areas (civil procedure, police eviction, criminal liability).

³⁰ One of these changes was the introduction of the new 48-hour limit for courts to decide on an application for this preliminary measure.

³¹ New regulation is applicable also in cases of stalking (irrespective of whether the stalker is a spouse, partner, or other family member or relative or if there is domestic violence).

³² The procedural regime follows substantive rules in § 751 of the Civil Code.

³³ The obligations and restriction that can be imposed by the preliminary measure are specified by § 405/1 of the ASJP.

³⁴ Oral hearing is explicitly excluded by § 404 of the ASJP.

³⁵ This opinion is reasoned by subsidiary application of the general rules contained in CCP and by the principles derived from § 6 of the CCP (fast and efficient court protection; Trněná, 2020, p. 815). On the other hand, Hrnčířík (2016, p. 232) makes the same conclusion without reasoning. It is true, that wording of the former regulation (in § 75c/2 CCP effective until 31 December 2013) was as follows: ‘The President of the Chamber shall decide on the application for preliminary measure without delay. Unless there is a risk of delay, the President of the Chamber may decide on an application for an preliminary measure under ... § 76b up to 48 hours after it has been lodged.’ However, this rule was changed when regulation was moved to the ASJP and it is therefore questionable, whether primary period should be used.

³⁶ Čuhelová (2015) points out, that for immediate protection the police eviction according to § 44 of the Police Act should be used.

³⁷ § 402/2 of the ASJP.

³⁸ It would be impractical to use the official means of communication (the postal service). Courts, therefore, contact the applicant directly (by telephone or e-mail) and explain the deficiencies in the application and how to complete it (Čuhelová, 2015; Trněná, 2020, p. 811).

order to complete the application before it rejects it, it would constitute a procedural failure and, therefore, a ground for appeal. In practice, however, it will be easier to submit a new and complete application (Čuhelová, 2015).

As the second ‘special’ preliminary measure (for immediate protection of minors), the court decision becomes enforceable as soon as it is granted while special rules are laid down for the execution.³⁹ The time limits for the court decision are followed by the time limits for the proceedings in the appellate court. The court of the first instance is obliged to refer the case to the court of appeal within 15 days of the lodging of the appeal. Consequently, the court of appeal shall decide on the appeal within 7 days after it obtains the file.⁴⁰

Since the preliminary measure has a limited duration, the Act on Special Judicial Proceedings also governs the proceedings for prolonging.⁴¹ Also, here, the time constraints are established for making the decision. Nevertheless, they are not so strict because temporary protection has already been granted, and the effects of preliminary measures persist until the court decides on its prolonging. The time limit for the court to decide here is 2 months.⁴²

4. Preliminary measure for immediate protection of minors

One of the large areas that is regulated by the Act on Special Judicial Proceedings is the court proceedings in cases involving minors. The first subsection of this body of rules deals with preliminary arrangements for the minor child in case immediate protection is necessary.⁴³

The regulation in § 452 ASJP follows § 924 of the Czech Civil Code⁴⁴ and applies to two types of situations. The first is where a minor child lacks proper care,⁴⁵ and the second is ‘when the life, normal development or other important interests of the child are seriously threatened or impaired.’⁴⁶ Both situa-

³⁹ § 407 and § 492–496 of the ASJP.

⁴⁰ § 409 of the ASJP.

⁴¹ § 410–412 of the ASJP.

⁴² § 410/2 and § 412/1 of the ASJP.

⁴³ Preliminary measures for immediate protection of minors were enacted on the basis of the judgment of the Constitutional Court from 28 March 1995, File No Pl. ÚS 20/94. Legislation that allowed an administrative body to decide on the placement of a child in institutional care had been declared unconstitutional. In its decision, the Constitutional Court emphasized that it is only the court that can decide on the removal of a child from parental care. Consequently, § 76a of the CCP (C), which introduced the new preliminary measure, was introduced. Afterward, it was moved to the ASJP (see above).

⁴⁴ ‘If a child is in a state of lack of proper care, whether or not there is a person who has the right to care for him or her, or if the child’s life, normal development or other important interests are seriously endangered or have been impaired, the court shall preliminarily regulate the child’s relations for the necessary period of time; the court’s decision shall not be interfered with if the child is not properly represented.’

⁴⁵ The scope of persons entitled to apply for this preliminary measure is limited. Primarily it is the authority ensuring socio-legal protection of minors. See § 454/1 ASJP.

⁴⁶ Šínová (2015, p. 224) mentions situations in which parents refuse life-saving medical treatment or similar serious situations.

tions require immediate action in order to place the child in appropriate care (personal or institutional).⁴⁷ Since the fastest possible intervention is crucial in this situation, time efficiency is emphasized by special rules regarding the court's decision on an application, enforceability, and a time limit for deciding in an appellate proceeding.

To ensure the timeliness and efficiency of the proceedings, § 456 sets a very short time limit for deciding on an application. This provision has recently been amended so that the strict 24-hour time limit was abandoned on 1 January 2022.⁴⁸ The current wording of § 456 is the following: 'The court shall decide on the application for a preliminary measure without delay. If the court decides after the expiry of 24 hours before the commencement of the proceedings, it shall state in the reasons for the decision the facts on which it was not possible to decide earlier.'

The explanatory report clarifies that the purpose of this amendment is to introduce greater flexibility into the regulation of this 'quick' preliminary measure. Accordingly, it is deemed sufficient to require the courts to decide on the application without delay, considering the circumstances of the case.⁴⁹ Although time priority is still emphasized in the amended legislation, the idea has shifted towards a more flexible solution and individualization of decision-making. On the other hand, the court shall explain, why it was impossible to decide within the time limit.⁵⁰

There are good reasons to believe that the flexibility of the current legislation may better serve the purpose of preliminary protection and, therefore, support the protection of minors. If the courts have more flexibility to adapt the timeframe according to the differences of an individual case, it may reduce the risk that the application would be dismissed purely due to time factors.⁵¹ On the other hand, appropriate justifications for the extended time limit to issue the decision, will be necessary in each case. It can be assumed that such reasons should be objective and reasonable.⁵²

⁴⁷ The provider of surrogate care must be specified in the court decision ordering the preliminary measure (see § 452/2). It can be either a family member or a foster parent, or an institution that cares for minor children when parents or other family members are unable or unwilling to do so. Due to the amendment to the ASJP (Act 363/2021 Coll.) effective from 1 January 2025, it is specified that for children under 3 years old, only non-institutional surrogate care is appropriate.

⁴⁸ Act No. 363/2021 Sb., see Article XVII. The former wording of § 456 had been the following: 'The court shall decide on the application for an interim measure without delay, but not later than 24 hours after it is filed.'

⁴⁹ Explanatory Note to the Act No. 363/2021 Coll., which amends the Act on Social and Legal Protection of Children and other acts of 9 September 2021.

⁵⁰ The need for flexibility to allow courts to decide after the 24-hour period, where appropriate, had been pointed out by some academics before the Act was amended (Hrnčířík, 2016, p. 241).

⁵¹ Which is the major point of criticism towards a 'general' period in CCP (C) (Hrnčířík, 2016, p. 198).

⁵² Following the rather strict case law of the Constitutional Court on the time urgency of court decisions in cases of preliminary measures according to § 452, it can be assumed that unjustified disregard of the newly designed time frame will sooner or later be corrected. See the decision of 12 May 2015, File No I. ÚS 2903/14-2.

As mentioned above, time priority is an essential requirement and, therefore, affects the whole concept of proceedings from start to finish.⁵³ Additional instruments to achieve the quickest possible action consist of modified rules on enforceability or special time limits for appeal proceedings. The need for immediate action also entails immediate implementation of the court decision. For this reason, the preliminary measure based on § 452 is enforceable as soon as it is granted.⁵⁴ Consequently, the court shall ensure its immediate realization.⁵⁵ Moreover, if there is a specific time limit for the court decision to be issued, it would be meaningless without a specific time limit for the proceedings in the appellate court. The court of first instance is obliged to refer the case to the court of appeal within 15 days after lodging the appeal,⁵⁶ and afterwards the appellate court must decide within 7 days.⁵⁷

III. SECURING THE CLAIMS: POLAND

The civil procedural law system in Poland should provide the opportunity to use measures guaranteeing quick legal protection even before the final resolution of the case (Jakubecki, 2016). This postulate is implemented by the provisions of the Code of Civil Procedure⁵⁸ on security proceedings, which allow for the granting of security in any civil case subject to examination by a court or arbitration court (Article 730 § 1 of the CCP(P)). Securing a claim is one of the most important forms of temporary legal protection granted to the person pursuing the claim for the duration of the dispute (Wengerek, 2009, p. 3).⁵⁹ The basis of this form of protection is the assumption that there is some preconceived state that has not yet been proven but will be justified in the future (Borek, 2017, p. 144). A characteristic feature of the security procedure

⁵³ The Constitutional Court in the decision of 12 May 2015, File No I. ÚS 2903/14-2 stressed that the priority applies to the proceedings in the merits of the case. Preliminary measures should be temporary; therefore, the competent public authorities should try to reunite the family as soon as possible. However, § 76a of the CCP (C) (in force until 31 December, 2013) and § 452 of the ASJP allow interim removal of a child from their parents' custody; it is a short-term preliminary measure and not a long-term solution or a 'quasi-final' decision. Once the proceedings have begun, the courts must work towards concluding the case as soon as possible, typically within a few months, by making a decision on the merits. Available (in Czech) at https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezyl_US_2903_14_an.pdf; a brief summary of the decision is available in the Constitutional Court Yearbook 2015: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Aktualne_prilohy/Ustavni_soud_Rocenka_2015_AN.pdf

⁵⁴ If the later moment is not determined by the court. See § 457 of the ASJP.

⁵⁵ Special rules for the enforcement procedure are laid down in § 497 of the ASJP.

⁵⁶ See § 465/1 of the ASJP.

⁵⁷ See § 465/12 of the ASJP.

⁵⁸ Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of the Republic of Poland [JL] 2023, item 1550 as amended (hereinafter referred to as the 'Polish Code of Civil Procedure' or 'CCP(P)').

⁵⁹ Resolution of the Supreme Court of 18 October 2013, III CZP 64/13, OSNC 2014, no. 7–8, item 70.

is its speed, which can be achieved thanks to its informalization as a result of abandoning the substantive examination of the secured claim in favour of substantiating the grounds for security (Banaszewska, 2023).

1. The general framework

The structural basis of the security proceedings is the immediate granting of legal protection through efficient examination of the application for security (Walasik, 2016). From the entry into force of the CCP(P) until 30 June 1996, there was no standard requiring the court to immediately consider an application for injunction. Pursuant to the amendment to the Polish Code of Civil Procedure of 1996, § 2 of Article 732 was introduced, according to which ‘the court shall recognize the application for security immediately, but no later than within a week of its submission. If the law provides for the application to be examined at a hearing, it should be examined no later than within one month’⁶⁰. It was pointed out in the literature that the introduction of the obligation to immediately examine an application for security was a consequence of the incorrect practice of examining applications for security of claims with long delays (Świeboda, 2004; Zieliński, 1996, p. 24). At the same time, it was emphasized that the deadline introduced in Article 732 § 2 of the CCP(P) was of an instructive nature, and therefore the court’s examination of the application after that deadline did not affect the effectiveness of the security decision (Jagiela, 2002).

2. The current shape of regulation

The current shape of the provisions regarding security proceedings was shaped under the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts (more on this amendment Jankowski, 2004; Snitko-Pleszko, 2004),⁶¹ which entered into force on 5 February 2005 (more on this amendment Jankowski, 2004; Snitko-Pleszko, 2004). The provisions relating to security proceedings were separated from the provisions on enforcement proceedings, as a result of which part two of the CCP(P) now covers only the provisions on security proceedings, while the provisions on enforcement proceedings have been placed in part three of the code (Banaszewska, 2023). As a result, the security proceedings became independent proceedings.

De lege lata, the requirement for speedy security proceedings is assumed to be implemented in Article 737 sentence 1 of the CCP(P), which imposes an obligation on the court to examine the application for security immediately, but no later than within one week from the date of its receipt by the court,

⁶⁰ Act of 1 March 1996, JL no. 43, item 189, which came into force on 1 July 1997.

⁶¹ Act of 2 July 2004 amending the Act – Code of Civil Procedure and certain other acts, JL no. 172, item 1804. The assumption of this amendment was to shape the security proceedings as ancillary proceedings in such a way that the proceedings would provide immediate legal protection to the interested entities, so that the entire proceedings in the case could achieve their goal, see Government bill amending the Act – Code of Civil Procedure and certain other acts of 4 October 2002, Form no. 965, Sejm of the 4th term, <https://orka.sejm.gov.pl/proc4.nsf/opisy/965.htm>.

unless a specific provision provides otherwise. If the law provides for the examination of the application at a hearing, it should be scheduled so that the hearing can be held within one month from the date of receipt of the application (Article 737, sentence 2, of the CCP(P)). A hearing is obligatory in the event of: the intention to grant an application for securing one of the claims listed in Article 753¹ § 1 of the CCP(P),⁶² consideration of an application for securing future maintenance claims related to the establishment of paternity (Article 754 of the CCP(P)), as well as consideration of an application to order the obligated person to deposit an appropriate sum of money into the deposit account of the Minister of Finance to secure the claims of the entitled person for further use of a trade secret (Article 755¹ of the CCP(P); Stefańska, 2022).

The court hearing before issuing a decision regarding security does not apply to other matters. The situation is clear as it currently stands, because the provision that states that the principles are taken into account regarding the issuance of security interests in secret unless a specific provision provides otherwise, has been repealed (Article 735 § 1 of CCP(P)).⁶³ Taking into account the nature and purpose of the proceedings, the doctrine is of the opinion that the possibility of examining the security at a hearing, in which its appointment is optional, should be considered in terms of ensuring effective protection for the entitled person (Zawistowski, 2021).

A special deadline covers cases of domestic violence in which an application for security must be examined immediately, but no later than within three days from the date of its receipt by the court (Article 755² § 4 of the CCP(P)). In these cases, the court may also grant security by extending the validity of the order to immediately leave the jointly occupied flat and its immediate surroundings and the prohibition on approaching the jointly occupied flat and its immediate surroundings, as well as the restraining order, contact ban and entry ban. The court may change the area or distance from the shared apartment indicated in the order and the prohibition, or the distance specified in meters in the prohibition on approaching a person suffering domestic violence, due to which a person using domestic violence cannot approach a person suffering domestic violence (Article 755² § 1 of the CCP(P)).⁶⁴ The three-day deadline is very short and may cause difficulties in meeting it, but it is reason-

⁶² An application for security is granted after a mandatory hearing in cases involving: 1) a pension, the amount needed for treatment costs, liability for bodily injury or loss of the breadwinner's life or health disorder, and for changing the rights covered by the life sentence to a life pension; 2) remuneration for work; 3) receivables under warranty or quality guarantee or contractual penalty, as well as receivables due to non-compliance of the consumer good with the consumer sales contract, against the entrepreneur up to PLN20,000; 4) receivables for rent or tenancy, as well as receivables for fees charged to the tenant or tenant and fees for the use of residential or commercial premises – up to the amount referred to in point 3; 5) compensation for damage resulting from violation of environmental protection regulations; 6) remuneration due to the creator of the inventive project.

⁶³ This provision was repealed on 21 August 2019 under the Act of 4 July 2019 amending the Code of Civil Procedure and certain other acts.

⁶⁴ Article 775² of the CCP(P) was introduced under the Act of 30 April 2020 amending the Civil Procedure Code and certain other acts. This act created a new system of protection for victims of violence.

nable that cases aimed at ensuring the safety of victims of violence be examined quickly, as they concern events that require immediate response due to the existing threat (Banaszewska, 2023).

3. Deadline for examining an application for security in court practice

The one-week deadline for examining an application for security starts from the day it is received by the court, which means that its length does not depend on the manner in which the applicant submitted the procedural document (Stefańska, 2022). As a result, posting the letter at the post office of the designated operator, simultaneously with submitting the letter to the court (Article 165 § 2 of the CCP(P)), will extend the actual time of its examination, compared to submitting the application at the court's reception office. A party that wants to obtain security as quickly as possible should make every effort to ensure that the application for security meets all the formal requirements. If the application does not meet the formal or fiscal requirements, it is not possible to process it until these deficiencies are corrected (Walasik, 2016). After completing the formal deficiencies, the one-week deadline for examining the application begins to run again.

An interesting situation is when an application for security is submitted in a letter initiating the proceedings, for example in a statement of claim, which is burdened with formal defects.⁶⁵ It is then possible to take two different positions. According to the first of them, the court should independently recognize the application for security, due to the requirement of efficiency and effectiveness of the security proceedings. The proceedings to remove the formal deficiencies of the claim may be prolonged, as a result of which the granting of security after correcting the formal deficiencies of the claim may be delayed due to the actions taken by the obligated party (Jagiela, 2020). According to the second, more convincing view, the application for security will be considered only after the formal deficiencies of the letter initiating the proceedings, most often a statement of claim, have been corrected. In such a situation, the application for security is treated as a component of the claim (argument from Article 187 § 1 and 2 of the CCP(P) and until the formal deficiencies of the claim are corrected, it cannot proceed (Ryśtał, 2023)).⁶⁶

If, as a result of the court's failure to issue a security order within the statutory deadline, the entitled person suffers damage resulting from the obstruction of the obligation to implement the security, the State Treasury may be liable for it. Such cases occur relatively rarely in practice, even though the courts do not comply with the instructive deadlines set out in Article 737 of the CCP(P).

⁶⁵ In such a situation, no fees are charged for the security application (Article 95 para. 1 point 1 Act of 28 July 2005 on Court Costs in Civil Cases, JL 2023, item 144 as amended).

⁶⁶ A similar view under Article 732 § 2 of the Code of Civil Procedure in the version in force from 1 July 1996 to 4 February 2005, expressed by Trzepiński (2002, side no. 36).

In principle, efforts should be made to comply with the deadlines in Article 737 of the CCP(P), due to the very essence of the security institution, which involves the immediate provision of protection (Partyk & Partyk, 2014). However, as in the previous legal situation, currently, these deadlines are of an instructive nature, which means that their violation by the court does not render the issued decision ineffective (Stefańska, 2022; Zieliński & Flaga-Gieruszyńska, 2024). Moreover, their possible exceeding does not automatically result in the conclusion that the proceedings are excessively long. Indicative terms have only indicative value for the assessment of excessive length, and their violation does not determine the validity of the complaint, as the detailed situational context must be taken into account.⁶⁷ In practice, courts very rarely receive complaints about the length of security proceedings. Firstly, the court competent to hear the complaint is the court superior to the court before which the proceedings are pending (Article 4(1) of the Act of 17 June 2004 on complaints about violation of a party's right to have the case heard in preparatory proceedings conducted or supervised by prosecutor and court proceedings without undue delay).⁶⁸ Therefore, for a party that seeks to obtain security as quickly as possible, filing a complaint involves the transfer of files to a higher court, which involves an additional lapse of time necessary to consider the complaint itself. Secondly, if the court does not hear the case within seven days, the party will most often try to act in a different way, for example by writing a letter to the chairman of the department.

Finally, it is worth noting that the deadlines referred to in Article 737 of the CCP(P) refer only to an application for injunction by the court. If an application to revoke or amend the security (Article 742 of the CCP(P)) or to issue a decision stating the liquidation of the security (Article 754¹(3) of the CCP(P)) is to be considered, the court is not obliged to consider these applications within a week. It seems that the indicated legal gap should be solved by changing the legal provisions, so that in the situations referred to in Article 747 of the CCP(P) and Article 754¹ § 3 of the CCP(P), there were deadlines obliging the court to take action. This would undoubtedly provide greater guarantees of legal protection for both parties to the security proceedings.

IV. CONCLUSIONS

The legal regulation of time limits for decisions on provisional judicial protection in two jurisdictions – the Czech Republic and Poland – has been described above. The comparison shows that there are similarities in the structure of the legislation. In both Codes of Civil Procedure, provisional judicial protection is outside the scope of the enforcement law (as is common in other

⁶⁷ Resolution of the Supreme Court of 12 January 2023, I NSP 329/22, *Legalis*.

⁶⁸ Act of 17 June 2004 on complaints about violation of a party's right to have the case heard in preparatory proceedings conducted or supervised by prosecutor and court proceedings without undue delay, *JL* 2023, item 1725.

similar legal systems). The overall ‘design’ of the proceedings is also rather similar – it is less formal than the standard first instance civil proceedings, the taking of evidence is simplified. Also the standard of proof required to establish the facts relevant to the decision is reduced. As both laws emphasize expediency and aim to reduce the risk of court reluctance, time limits for decisions are implemented. Their length is essentially identical (one week/seven days). In both pieces of legislation, this deadline is of an instructive nature, which means that its violation by the court will not affect the effectiveness of the legal protection granted after this deadline.

Although the main features of the proceedings are similar in both laws, there are some significant differences regarding the course of the proceedings. First, the Czech Code of Civil Procedure excludes assistance of the court in case of incorrect or incomplete application in the case of preliminary proceedings (such application should be rejected), whereas Polish law does not impose any restrictions in this respect. Another significant difference is that Polish law provides for oral hearings in some cases, listed exhaustively in the CCP(P). According to Czech legislation and practice – although not excluded by the law – oral hearings (concerning ‘general’ preliminary measures) never take place in preliminary proceedings. This situation is caused by the short deadline for the court’s decision – although it is instructive, the courts consider it a binding limit that is almost never violated in practice. In this respect, Polish legislation seems to meet the requirements for the right to a fair trial better than Czech legislation. It also gives the court more flexibility in taking evidence and considering the facts of the case, as the deadline for issuing a decision in these cases is longer (one month) compared to the Czech regulation. Finally, according to the Czech Code of Civil Procedure, the ground for a provisional measure must be fully proven, while the standard of proof for proving a claim is lower. According to the Polish Code of Civil Procedure, the standard of proof is lowered for both the ground and the claim. This situation in the Czech Republic may, in some cases, lead to the dismissal of an application due to difficulties with proving the ground for issuing a preliminary measure. In general, the Polish legislation seems to be more flexible and to protect the procedural rights of the parties better than the Czech Code of Civil Procedure. Although the Polish Code of Civil Procedure emphasizes time efficiency and the need for speed, it does not restrict the defendant’s right to be heard in each case as the Czech legislation does, which leads to inequality of arms.

Czech civil procedure introduces two types of ‘special’ preliminary measures (for immediate protection of children and against domestic violence). The need for special protection in these cases is reflected in various aspects, including stricter time limits for the court’s decision (on the application, on appeal).

It would appear that the Czech regulation is in some respects stricter than the Polish one and that it may, therefore, be eventually less favourable to the applicant. On the other hand, the Czech regulation contains safeguards to provide better protection to vulnerable groups – minors and victims of domestic violence. In conclusion, there are points in both legal systems in which the

legal systems being compared can draw inspiration from each other for the future. In the Polish legal system, applications for security in cases related to counteracting domestic violence are examined in accordance with the provisions of the CCP(P) within three days. The legislator noticed the need for the court to react immediately due to the existing threat.

The presented analysis may constitute a contribution to the discussion on possible changes to the provisions of civil procedural law in Poland and the Czech Republic.

References

- Banaszewska, A. (2023). Komentarz do art. 730 KPC [Commentary on the Article 730 CCP]. In P. Rylski P. & A. Olaś (Eds.), *Kodeks postępowania cywilnego. Komentarz* (side no. 3). Legalis.
- Borek, M. (2017). Zabezpieczenie świadczeń alimentacyjnych [Securing maintenance payments]. *Studia Prawnicze. Rozprawy i Materiały*, 2(11), 143–154. <https://sp.ka.edu.pl/numery/2017-2/studia-prawnicze-rim-2017-2-borek.pdf>
- Čuhelová, K. (2015). Komentář k § 402 [Commentary on § 402 of the ASJP]. In P. Lavický et al., *Zákon o zvláštních řízeních soudních. Zákon o veřejných rejstřících. Praktický komentář*. Wolters Kluwer ČR.
- Čuhelová, K., & Pondikasová, T. (2016). Komentář k § 75c [Commentary on § 75c of the Czech Code of Civil Procedure]. In P. Lavický et al., *Občanský soudní řád (§ 1 až 250l). Zákon o rozhodování některých kompetenčních sporů. Komentář*. Wolters Kluwer ČR.
- Drápal, L. (2009). Komentář k § 75c [Commentary on § 75c of the Czech Code of Civil Procedure]. In L. Drápal, J. Bureš et al., *Občanský soudní řád I. Komentář* (pp. 435–442). C. H. Beck.
- Hrnčířík, V. (2016). *Předběžná opatření v civilním řízení* [Preliminary measures in civil procedure]. C. H. Beck.
- Jagiela, J. (2002). Komentarz do art. 732 KPC [Commentary on the Article 730 CCP]. In K. Piaśnicki (Ed.), *Kodeks postępowania cywilnego. Komentarz* (side no. 1–10). Legalis.
- Jagiela, J. (2020). Komentarz do art. 737 KPC [Commentary on the Article 737 CCP]. In A. Marciniak (Ed.), *Kodeks postępowania cywilnego. Komentarz: Tom 4. Komentarz. Art. 730–1095(1)* (side no. 1). Legalis.
- Jakubecki, A. (2016). Pojęcie, cele i funkcja postępowania zabezpieczającego [The concept, goals and function of security proceedings]. In T. Ereciński & A. Jakubecki (Eds.), *System prawa procesowego cywilnego: Tom 5. Postępowanie zabezpieczające* (p. 28). Wolters Kluwer.
- Jankowski, J. (2004). Nowelizacja Kodeksu postępowania cywilnego. Cz. II. Postępowanie zabezpieczające [Amendment to the Code of Civil Procedure. Part II. Security proceedings]. *Monitor Prawniczy*, 20, 923–928.
- Jirsa, J. (2016). Komentář k § 75c [Commentary on § 75c of the Czech Code of Civil Procedure]. In J. Jirsa et al., *Občanské soudní řízení. Soudcovský komentář. Kniha I., § 1–78g občanského soudního řádu*. Wolters Kluwer ČR.
- Králičková, Z. (2022). Právo proti domácímu násilí: Procesní aspekty [Law against domestic violence: Procedural aspects]. In Z. Králičková et al., *Rodinné právo* (pp. 356–357). C. H. Beck.
- Partyk, A., & T. Partyk (2014). *Termin do rozpoznania przez sąd wniosku o udzielenie zabezpieczenia* [The deadline for the court to decide on an application for a security measure]. Lex/el.
- Ryśtał, D. (2023). Komentarz do art. 737 KPC [Commentary on the Article 737 CPC]. In T. Szancilo (Ed.), *Kodeks postępowania cywilnego. Komentarz. Art. 459–1217* (side no. 5). Legalis.
- Šínová, R. (2015). Předběžné opatření upravující poměry dítěte [Preliminary measure in cases of minors]. In R. Šínová et al., *Civilní proces. Řízení nesporné, rozhodčí a s mezinárodním prvkem* (pp. 223–228). C. H. Beck.
- Snitko-Pleszko, M. (2004). Kodeks postępowania cywilnego po nowelizacji – tabelaryczne zestawienie zmian wraz z komentarzem [Code of Civil Procedure after amendment – tabular list of changes with comments]. *Monitor Prawniczy*, 20, dodatek, 1–19.

- Stefańska, E. (2022). Komentarz do art. 737 KPC [Commentary on the Article 737 CCP]. In M. Manowska (Ed.), *Kodeks postępowania cywilnego. Komentarz aktualizowany: Tom 2. Art. 478–1217* (side no. 3). Lex/el.
- Świeboda, Z. (2004). *Komentarz do kodeksu postępowania cywilnego. Część druga. Postępowanie zabezpieczające i egzekucyjne* [Commentary on the Code of Civil Procedure. Part two. Security and enforcement proceedings]. Lex/el.
- Trněná, K. (2020). Komentář k 404 zákona o zvláštních řízeních soudních [Commentary on § 402 of the ASJP]. In K. Svoboda et al., *Zákon o zvláštních řízeních soudních. Komentář* (2nd ed., pp. 815–817). C. H. Beck
- Trzepiński, M. (2002). Skutki nieuiszczenia opłat sądowych w postępowaniu cywilnym [Consequences of failure to pay court fees in civil proceedings]. *Przegląd Sądowy*, 3, 36–47.
- Walasik, M. (2016). Przebieg postępowania zabezpieczającego [The course of security proceedings]. In T. Ereciński & A. Jakubecki (Eds.), *System prawa procesowego cywilnego: Tom 2. Postępowanie zabezpieczające* (p. 28). Wolters Kluwer.
- Wengerek, E. (2009). *Postępowanie zabezpieczające i egzekucyjne. Komentarz do części II i III k.p.c.* [Security and enforcement proceedings: Commentary on part II and III of the Code of Civil Procedure]. Wydawnictwo Zrzeszenia Prawników Polskich.
- Zawistowski, D. (2021). Komentarz do art. 737 KPC [Commentary on Article 737 KPC]. In T. Wiśniewski (Ed.), *Kodeks postępowania cywilnego. Komentarz: Tom 4. Art. 730–1088* (side no. 1). Lex/el.
- Zieliński, A. (1996). Kodeks postępowania cywilnego po nowelizacji z 1996 r. [Code of Civil Procedure after its amendment in 1996]. *Palestra*, 40(7–8), 13–26.
- Zieliński, A., & Flaga-Gieruszyńska, K. (2024). Komentarz do art. 737 KPC [Commentary on Article 737 KPC]. In A. Zieliński & K. Flaga-Gieruszyńska (Ed.), *Kodeks postępowania cywilnego. Komentarz* (side number 1). Legalis.