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PhD thesis

The concept of normative Public policy clause

SUMMARY

The theme of the work is "normative concept of public policy". Public policy is a general clause occurs in many areas of the Polish legal system, as well as in international law and European Union law and the national law of European countries. This clause is present in the Polish law especially in the area of Civil Procedure. Most often used in legal transactions in arbitration courts and international civil proceedings.

The definition of legitimate public policy appeared in the Code of Civil Procedure as a result of amendments to that Act after 2000. The legal definition is as follows: the basic principles of the legal order of the Polish Republic. *Definiens* definition of public policy does not remove the indeterminate *definiendum*. Return undefined in *definiens* is the word "basic". Also, the word "rules" and "legal order" requires further appeal to their definition. The interpretation of the legal definition leaves open the question of which rules make up the basic principles of forming the public policy and whether the rules should specify when they should petrify in the form of a catalog of rules.

There is no doubt that the public is a general clause. Because she meets all three criteria appropriate to these legal institutions. Ambiguity of, the clearance decision and the reference to the outside of the system. At the same time it must be distinguished from such legal institutions occurring among in the Code of Civil Procedure as the rule of law, public interest, public interest, public order, the Polish legal order.

The function of public policy is primarily to protect its own legal system against the use of foreign law or the recognition and enforcement of foreign judgments, which are in contradiction with axiology legal regime on its territory.

General court regardless of the instance, and the binding of the findings of fact by making a control in the light of public policy, is not entitled to the substance of the decisions, including taking evidence and make new findings of fact.

One of the key issues related to public order clause is to answer the question of what rules the legal order of the Republic of Polish includes a clause to that, and whether those rules should be cataloged. The solution to this problem is to use the theory developed on the basis of deliberations on the general clause of the principles of social coexistence. This is due to the similarity of the public policy clause and the rules of social coexistence. The doctrine of law and judicial decisions trying to answer the question about the range principles of social coexistence proposed two concepts: the concept of normative and situationist concept of rules of social coexistence. These concepts can apply to use of the public policy clause. The study formulated the concept of normative and situationist concept of public policy and its position in the field of concretization policy clause and cataloging rules to it included. It is therefore considered that the concept of normative public policy is a priority in relation to the Situationist concept. These concepts remain inseparable relationship, the normative concept is the starting point and should be supplemented situationist concept. The basis for this position is primarily a recognition of legal certainty as the parent of the legal system.

It is therefore considered that the cataloging rules that make up the public policy is primarily the responsibility of law doctrine. Cataloging these rules it is based on the reflection theoretical and legal aiming to specify the specific rules that make up the general clause and register the views expressed in the jurisprudence in specific decisions, which subsequently may lie in the trends in the case. This directory should not petrify in the form of specific statutory provisions, as this would result in an excessively detailed analysis of law and subsequently lost by the public policy nature of the general clause.

Catalogue principles that make up the public policy should be an objectified point of reference in the light of which is considered the facts. At the same time it should be noted that the final systematization catalog of rules is practically impossible. This is due to the fact that social life is continually expanding, and in the wake of the developing legal system. The inability to "closure" catalog of rules that make up the public policy but can not be an argument against the cataloging rules establishing public order clause. Failure to do so would result in cataloging the ambiguity of the general clause would be quite arbitrary and in no way

to fulfill any of its contents. The inability to "closure" catalog of principles forming the public policy that makes never lose its character of a general clause including its indeterminate. Cataloging rules makes, however, that the public becomes legal institution more "predictable" for the company, which is interested in its application.