

“The essence of power of attorney in Polish law”

- the summary of Ph.D. dissertation

The power of attorney is very interesting legal institution i.a. because of its flexibility. About the flexibility of the power of attorney, as a legal phenomenon, indicates that it is set in many branches and parts of Polish law. This institution takes its justification from everyday life needs. The representation, perceived as a help provided by one person to another in all sorts of activities, not only legal, but also social, seems to be essential. This is due to various reasons, e.g. excess of duties, requirements of expertise, temporary absence. Every entity should have right to benefit from such help in relations of various kinds, including legal relations.

In Polish legal literature studies relating to particular type of a power of attorney have appeared. However, there is no study, which would analyze power of attorney in general, trying to grasp what constructs legal being of power of attorney in different branches of Polish law and disciplines of legal sciences related with them parallel. Recognizing this important issue, from the point of view of dogmatism and the theory of civil law, was the inspiration for the author to work on this dissertation.

The main thesis is contained in a question defining research problem of this study: what is the essence of power of attorney in Polish law? This question, bearing in mind plurality of types, includes indirect assumption (statement) that every power of attorney in Polish legal system has common essence, regardless of type.

The study consists of the introduction, six chapters and the end with final conclusions. The first chapter begins with placing the power of attorney in broader perspective, which is the substitution. In this regard, following legal forms are described there: the indirect representative, the body of a legal person, the statutory agent, the person acting on business premises, the actual substitute, including the messenger and the assistant. In this chapter, development of the power of attorney from the time of Roman law, emphasizing the most important moments, which influenced the contemporary shape of this institution is described. The main objective of the first chapter is to define concept of the power of attorney, for which reliable is mainly the substantive civil power of attorney, but also the procedural civil power of attorney and the power of procuration. These three types of power of attorney were

relatively comprehensively described in normative acts and have relatively autonomous normative regulations in relation to other types. Therefore they are suitable for detailed juridical analysis, from which universal conclusions about essence of power of attorney can be drawn, that are relevant for other types of power of attorney in Polish law.

The second chapter concerns theoretical and methodological considerations. In this chapter, the author deals with constructing formally correct and accurate definition of the essence of the power of attorney, as well as demonstrating its scientific usefulness. The power of attorney cannot be limited only to one discipline, e.g. the substantive civil law. The analysis in this frame requires adequate methodological tools. Therefore, by analysis of the essence of power of attorney are used such tools as: constitutive rules and typology concept. With use of these instruments, the criterion which allows to specify constitutive characteristics of the power of attorney in Polish legal system was defined in this study. This allowed to construct definition of the power of attorney essence.

The subject of third chapter is description of these legal institutions, which are not the essence of power of attorney. They are related to the power of attorney and build it on the grounds of Polish law, but they are variable in specific types of the power of attorney. They are not the essence of power of attorney, but the adaptation of the power of attorney to specific legal relationships, in which the power of attorney shall exist legally. In the study concerned, these institutions are defined as: the subjective scope of power of attorney, the objective scope of power of attorney, the form of power of attorney, the substitution and the termination of power of attorney. Of course, more detailed classification of these institutions can be carried out.

The fourth chapter concerns problem of interaction, that occurs between the power of attorney and basic relationship. In this chapter, the author first analyzes the relation of basic relationship, especially in the context of the power of attorney. The mandatory relationship, the employment relationship and other relationships, acting as basic relation to the power of attorney, have big impact on the power of attorney, but they are beyond the structure of the power of attorney. Thus, they are irrelevant from the point of view of the essence of the power of attorney. On the other hand, relevant from the point of view of the essence of the power of attorney is their relationship (linking, interaction) with the power of attorney, which implies so rudimentary feature of the power of attorney, that is its independence. Consequently, major part of the fourth chapter is dedicated to relational, which exists between the power of attorney and basic relationship, as well as independence of the power of attorney.

Legal nature of granting the power of attorney, i.e. legal action, which creates the power of attorney is the subject matter in fifth chapter. The author starts from the concept of authorizing activities, making description of such activities. Analysis of the power of attorney in terms of its authorizing nature is another section of consideration contained in the fifth chapter. Then the author moves on to the next important issue for the essence of power of attorney, which is answer to question, whether granting the power of attorney is unilateral or bilateral legal action. With this issue the problem of acceptance of the power of attorney is related. With the legal nature of power of attorney is also related problem, who is addressee of principal's declaration granting power of attorney and plenipotentiary's declaration of acceptance the power of attorney. This analysis completes the fifth chapter.

Description of various types of power of attorney in Polish law, apart from the substantive and procedural civil power of attorney and the power of procuracy is the subject of the last chapter. This description is divided into two parts, i.e. types of power of attorney in substantive law, for which as examples are presented: the power of attorney in commercial companies law, the power of attorney in cooperative law, the power of attorney in bankruptcy and reorganization law, the power of attorney in law of bills of exchange and checks; as well as the types of power of attorney in procedural law, where as an examples are presented: the power of attorney in general administrative proceedings, the power of attorney in proceedings before the Patent Office of the Republic of Poland, the power of attorney in proceedings before administrative courts and the power of attorney in criminal procedure.

On the basis of normative regulation's research of the substantive and procedural civil power of attorney and the power of procuracy, the essence of power of attorney in Polish law was defined and described in the study. This dissertation blends into overall issue of the power of attorney, which in author's opinion, consists of general consideration about the power of attorney, having universal character for each type of the power of attorney, that was presented in this study, as well as special consideration, which are subject of specific types of the power of attorney.

The sources of law, which the author based on in this study, are the acts governing different types of power of attorney in Polish law, especially private law and civil procedure. As a matter of literature, rich achievements of Polish science of civil law, both substantive and procedural, as well as commercial law and publications in field of a legal theory, methodology and philosophy were used. The author uses also foreign literature, especially German due to strong relationships of Polish model of the power of attorney with German model. Apart from achievements of the doctrinal, the author leans also on judgments of Polish

courts and, in some extent, on Court of Justice of the European Union. In the dissertation following methods are used: logical-language, hermeneutic, argumentative, comparative and historical.