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SUMMARY OF THE DOCTORAL DISSERTATION

Clauses of article 5 of the Civil Code and article 8 of the Labour Code in the judicial application of law - a theoretical and legal study

The subject of the dissertation is the problem of the general clauses of the principles of social co-existence as well as the social and economic purpose of law in Article 5 of the Civil Code and Article 8 of the Labour Code in the judicial application of law. The subject of the undertaken research is a part of a broader problem of creating and applying general clauses in the Polish legal order. One of the reasons for undertaking it was the construction of § 4 of the Regulation of the Prime Minister of 20 June 2002 on "The principles of legislative technique". This is due to the fact that § 4 Section 1 of the Principles states that an act may not repeat provisions contained in other acts. Violation of the abovementioned prohibition gives rise to a justified risk that the repetitions will be given a different normative meaning in the law application process. Meanwhile, the legislator, for some reason, decided to maintain in the new legal order the wording of Article 8 of the Labour Code, which constitutes an exact repetition of Article 5 of the Civil Code.

The following arguments also support the legitimacy of the research topic undertaken. The provisions under consideration pertain to the issue of abuse of rights and set the limits within which it is permissible to exercise subjective rights in civil law and employment law. The limits of the exercise of these rights have been set in both cases by the principles of social co-existence and the socio-economic purpose of the right - the normative constructions of the general clauses, which are indefinite by their nature. It is crucial that both provisions are placed in the general provisions of the codes, which significantly broadens their scope of application. Finally, common to these constructions is the fact that the general clauses of the principles of social co-existence and socio-economic purpose of law were adopted from the Soviet legal order. In the period of the People's Republic of Poland, the discussed provisions, together with the content of Article 4 of the Civil Code and Article 7 of the Labour Code, constituted a tool for ideologisation and politicisation of the law applying processes. Despite the profound change

in social axiology, that took place after the collapse of the People's State, the Polish legislator did not decide to abandon clauses having a Soviet connotation. These clauses continue to function to this day in the new, post-transformation, democratic legal order.

The research problem of the dissertation gives rise to numerous questions. The first primary research objective is to answer the question how the general clauses of principles of social co-existence and socio-economic purpose of law stated in Article 5 of the Civil Code and Article 8 of the Labour Code are perceived in the process of judicial application of law. In this context, the most important research question is whether the repetition that occurs between the content of Article 5 of the Civil Code and Article 8 of the Labour Code is a deliberate legislative procedure (a conscious action of the legislator) or just an unnecessary repetition. It shall also be replied whether the understanding of Article 5 of the Civil Code and Article 8 of the Labour Code differs in civil and employment law cases. What raises doubts of the author of the dissertation is whether in relation to a given category of cases (civil case vs. employment law case) the general clauses of Article 5 of the Civil Code and Article 8 of the Labour Code are given a different normative meaning. Furthermore, it is crucial for the study to answer the query whether the perception of the general clauses of Article 5 of the Civil Code and Article 8 of the Labour Code has been transformed under the influence of the change in social axiology that occurred after the collapse of the socialist state. The second main research objective is to respond whether at the stage of judicial application of law there is objectification of the general clauses of Article 5 of the Civil Code and Article 8 of the Labour Code.

The problem considered in the dissertation is an interdisciplinary research issue, important in both theoretical and practical contexts. The novelty of the research is manifested through the specific character of the research approach and determination of its results. There is a lack of scientific publications that would undertake the analysis of these two provisions, setting the limits of the abuse of rights in historical, doctrinal, legislative, decision-making and comparative terms, respectively.

The layout of the study results from the subject of research and the assumed research objective. The dissertation consists of six main chapters, an introduction, and a seventh chapter that serves as a conclusion.. The dissertation can be divided into two main parts. The theoretical part - chapters I - IV and the practical part - chapters V - VI .

The theoretical part deals with the key issues of the dissertation. These are the notions of subjective right and abuse of right. The genesis of the division of law into private and public law has been discussed. The issue of the nature of civil law and employment law has been developed, as well as their place in the branch structure of law in the context of the changing

paradigm of the dichotomous division of law into private and public one. The concept, essence and functions of the normative construction of the general clauses and their role in the process of law creation and application have been analysed. The considerations also focus on the issues of the legislative technique, principles of constructing the text of a normative act and the general principle of the prohibition of repeating provisions contained in other acts. In this section, the author addresses the history of the construction of Article 5 of the Civil Code and Article 8 of the Labour Code as well as makes an attempt to dogmatically determine the meaning of the principles of social co-existence and the socio-economic purpose of law in civil law and employment law. The author also analyses the relation between objectivisation and subjectivisation of principles of social co-existence and socio-economic purpose of law in the process of law application.

The practical part has been devoted to the analysis of research material in the form of court rulings. The author of the dissertation analysed the judicial decisions of common courts and the Supreme Court concerning the application of Article 5 of the Civil Code and Article 8 of the Labour Code respectively. What is crucial, the analysis has been carried out with reference to two types of cases - civil law and employment law cases, in two time frames - before and after the transformation, and separately for each of the clauses constituting the concept of abuse of rights. Detailed legal-comparative conclusions have been presented in the summary.

The methods used in this study are adequate in relation to the adopted research assumptions. The method used in the initial phase of the research is the method of terminological and conceptual analysis. Another method of research is the formal-dogmatic method. The method of historical-legal analysis has also been used. Furthermore, the analysis of statements of reasons of court rulings has been introduced. However, it seems that the most important for the whole dissertation is the use of the comparative method.

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