"The Legal Nature of a Settlement Concluded before a Mediator in Civil Proceedings" – dissertation summary

The aim of the problems undertaken in the doctoral thesis is to analyse comprehensively the legal nature of a settlement concluded before a mediator within the conducted civil proceedings with the consideration of an institution of mediation in the Polish civil proceedings. In order to fulfil the above assumption and to present the main topic of the paper thoroughly, the author focused mainly on the provisions of the Code of Civil Procedure as well as on other legal regulations pertaining to mediation institutions. The fundamental aim of this doctoral thesis is to present the settlement concluded before a mediator through the prism of its legal nature. The issue of determining the legal nature of a mediational settlement is one of the most problematic issues connected with alternative methods of resolving disputes. The settlement concluded before a mediator is a subject worthy of consideration, not only theoretically, but also it is the issue valid for discussion for practitioners. In the case of mediation, just as with any other way of solving civil disputes, it is the effectiveness of the outcome achieved as a result of conducting the mediation procedure that is of utmost importance. The legal nature of a mediational settlement – since the time of introducing the institution of mediation into the Code of Civil Procedure in 2005 – has become the subject of lively discussion among procedural law experts opting both for as well as against it becoming binding in a given form in the Polish legal order.

That topic is particularly significant and requires a thorough analysis due to the increase of significance of new alternative methods of solving disputes between participants of legal transactions, including primarily the institution of mediation. The problem of legal nature of a mediational settlement is undoubtedly of great importance to the parties of mediation proceedings for which the legal effect of the concluded settlement is frequently the most important aspect of the whole proceedings. Therefore, the rudimentary scientific aim of the presented doctoral dissertation is a comprehensive theoretical as well as dogmatic and legal analysis of legal nature of the settlement concluded before a mediator.

The decision regarding the choice of the topic for doctoral dissertation was influenced primarily by the observations of the practical use of the institution of mediation, as well as the analysis of settlements concluded before the mediator from the point of view of their legal effect. The Code of Civil Procedure regulates the issue of the legal nature of a mediational settlement in quite a fragmentary way. Presenting the institution of a mediational settlement through the prism of its legal nature, the author of the doctoral dissertation formulates one

main thesis in it. Its purpose is to indicate that a settlement concluded before a mediator has primarily a substantive nature and with the consideration of also other circumstances it may achieve a procedural status.

The problem of legal nature of a settlement concluded before a mediator is of great importance because solving it has an impact on key decisions as to the choice of legal provisions regulating the consequences of defects of the statement of will concluded within the settlement, on the possibility of applying the institution of revocability of procedural activities or waiver of the consequences of legal actions. The legal nature of a mediational settlement is the subject of heated discussions, also in the Polish doctrine and judicature. Three groups of theories have been worked out: substantive (a settlement constitutes a substantive law activity), procedural (a settlement is a procedural activity), and combined (a settlement combines substantive and procedural features). The theories belonging to each of the three above groups differ from one another. However, the analysis of the available reference books in the said scope allows to conclude that the views pertaining to accepting a homogeneous nature of a mediational settlement, i.e. either substantive or procedural, did not gain wide acceptance amongst the representatives of the legal doctrine, and at present these theories only have historical significance. The combined theory is the subject of lively discussion among procedural law experts. The dispute among the representatives of the doctrine boils down to how the substantive element is situated in relation to the procedural one in the mediational settlement. The above constitutes the subject of research of the doctoral dissertation.

This doctoral dissertation is divided into six essential chapters which consist of further subchapters.

Chapter I constitutes the introduction to the main topic connected with the institution of mediation. It was devoted to general issues, in particular to the introduction of the essence of mediation procedure (its commencement, course and completion was described), and positioning mediation in between other alternative methods of dispute solving. Chapter I also contains the legal comparative analysis of mediation against the legal solutions of other countries. Moreover, as significant for the discussed topic, the sources of mediation were described in light of Polish legal order (with the particular consideration of the Constitution of the Republic of Poland), and also in light of European law. The chapter is concluded with the issues of: the postulate of amicable solution of matters in civil proceedings, the admissibility

of mediation in civil cases, and the issue presenting the definition of a settlement in a broad sense.

Chapter II presents the taxonomy of settlements which occur both in civil substantive law as well as procedural law. Particular attention was paid to a court settlement, mainly due to its strong resemblance to the mediational settlement. Even though in the scope of legal nature the mediational settlement should not be equated with a settlement concluded before a court, some directions of deliberations may certainly be analogous what will be justified in the doctoral dissertation. Moreover, arbitration settlement, that is the settlement concluded within arbitration proceedings, was verified. Also, the settlement agreement, concluded in civil substantive law, which is of key importance for the discussed issue, was described. Additionally, the basic problems pertaining to the mediational settlement were introduced within chapter II, which are further developed in consecutive chapters.

Chapter II was fully devoted to the basic features of substantive and procedural activities. Discussing the above issue is necessary to assess whether the mediational settlement has a substantive, procedural or combined nature.

Chapter IV presents the deliberations on the legal nature of a settlement concluded before a mediator with the consideration of the views of the doctrine and the achievements of the judicature. It tackles the problem of diversity of the views presented in the reference books on the legal nature of the mediational settlement.

Within chapter V the final assessment of a settlement concluded before a mediator was made. The assessment was made with the use of one of the two basic research methods – dogmatic and legal method with the particular consideration of Article 183^{15} of the Code of Civil Procedure which levels the legal effect of the mediational settlement with that of the court settlement. The author further concentrates on the substantive and procedural consequences of a settlement concluded before a mediator, and on the possibility to waive them. The said settlement was analysed separately as an execution title. The chapter is completed by the verification of the procedure on approving the mediational settlement.

The completion of the dissertation constitutes the conclusion of all deliberations, and at the same time the compilation of numerous views of the doctrine included in the dissertation.

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