Doctoral dissertation titled:

Unilateral legal acts as a source of obligations

SUMMARY

Unilateral legal acts, which may constitute the source of obligation relationships, are legally important from both theoretical and practical point of view, nonetheless, they have not been elaborated comprehensively so far.

In the light of the current law there is no doubt that unilateral legal acts may constitute the source of obligation relationships. The research problem lies in determining whether there is an open or closed catalog of unilateral legal acts that may constitute the source of obligations. Due to the lack of statutory regulation, this issue is not resolved unequivocally.

The issue of the existence of the party autonomy principle in civil law, its impact on the possibility of making unilateral unnamed legal acts and the reflection of this principle in legislation are indissolubly linked with the consideration of an open or closed catalog of the above mentioned acts. Representatives of doctrine argue in favor of the validity of each of the aforementioned considerations, however, the stance assuming *numerus clausus* of unilateral legal acts should be deemed as the dominant one.

Due to the fact that the scientific research carried out within the doctoral dissertation entitled "Unilateral legal acts as a source of obligations" has been directed towards a comprehensive elaboration of the topic of unilateral legal acts as sources of obligations, primarily, the analysis has been focused on the issues concerning the obligation relationship, secondly - on the sources of obligations in general, with gradual development of the argumentation on unilateral legal acts that may give rise to the obligation relationships.

It is worth mentioning that due to the nature of the issue at hand a dogmatic-legal, as well as - to a more modest extent - a historical-legal and comparative methods have been used within the research. In the analysis of the content of legal act texts, the method of legal text exegesis and the linguistic method proved to be useful.

Unilateral legal actions are characterized by the fact that they contain a statement of will of only one party to the obligation relationship. The legal effects of the act are not dependent on the activity (or passivity) of the other party. The execution of a unilateral legal act, which belongs to the category of acts that can be the source of an obligational relationship, thus gives rise to an obligation.

The law regulates, among others, the following legal acts such as: a public promise, issuance of a bill of exchange, issuance of a check, an ordinary bequest in a will, disposition of a savings deposit in the event of death (and other dispositions in the event of death), a guarantee in the event of sale, acceptance of a transfer, or correction of inaccurate or unreliable news in a press article.

In the case of unnamed unilateral legal acts, it was necessary to examine the impact of the main principle of civil law, i.e. the principle of will autonomy together with the freedom of shaping obligation relationships on the possibility to perform such acts in the existing legal state. The type of performed actions is of great significance, with particular consideration of the division into unilaterally and bilaterally obliging actions (due to the imposition of the obligation of performance on particular parties to the obligation relationship), as well as the division of declarations of will into those addressed to an individually specified addressee, those addressed to an individually undefined group of recipients, and those not addressed to another entity (as a manner of performing a unilateral legal act and its legal implementation).

The conducted analysis has determined the assumption that if there was an open catalog of unilateral legal acts that could be the source of obligations, only such unilateral legal acts that are unilaterally binding, with an obligation to provide performance on the acting entity, would be admissible. The creation of obligation relationships by way of unnamed unilateral acts that are bilaterally or unilaterally binding, but in which the debtor is the addressee of the declaration of intent (the other party to the obligation), would violate the principles of equity and social justice, as well as the protection of trust principle and the related constitutional principle of security of trading. Such actions would therefore be invalid due to their inconsistency with the principles of social interaction. Contrastingly, there were no fundamental impediments - if unnamed unilateral legal acts were to be regarded as permissible when carrying out such actions towards an individually designated addressee, an unspecified group of recipients, or actions in which a declaration of will is not addressed to another entity. Nevertheless, after taking into account all the arguments in favor of an open or a closed catalog of unilateral legal transactions, the research finally favored the concept of a *numerus clausus* of unilateral legal transactions that may constitute a source of obligations.

The second half of the dissertation focused on a detailed presentation of those unilateral legal acts that may give rise to obligation relationships, which were regulated by the act. Efforts have been made to confront and complement doctrinal considerations concerning the discussed legal acts. The author has also presented her own solutions to some problems with interpretation or application of particular regulations within the discussed institutions.

The public promise was given attention, as well as the issuance of a bill of exchange and a check, an ordinary bequest in a will, and disposition of a savings deposit in case of death, as they are the most relevant examples of unilateral legal acts, the performance of which leads to the creation of obligation relationships. It ought to be mentioned that the stance of doctrine is not always uniform in these cases either. The most doubts are currently raised in relation to bills of exchange and checks, the issuance of which in the literature is increasingly connected with the conclusion of an agreement.

A public promise consists of a promise made by public announcement to grant a reward for the performance or best performance of a specified action (or work). An obligation that originates from a public promise has conditional nature. Statutory regulation of this institution is extremely modest (covered by only three articles of the Civil Code), which gives rise to many doubts of interpretation and practical problems. Only the public promise in public procurement is more thoroughly regulated, and some doctrines consider it to be a special type of public promise.

Unlike public promise, bills of exchange and checks are regulated by law in great detail, and the body of doctrine in this case is extensive. By issuing a bill of exchange or a check, the issuer undertakes to perform a specified monetary performance. A bill of exchange contains an unconditional promise made by the drawer to pay to the drawee a specific amount of money (promissory note), or an unconditional instruction made by the drawer to a third party (acceptor/drawee) to pay to the drawee a specific amount of money (draft). A check, in turn, just like a draft, contains a written order addressed by the drawer to the drawee to pay a specified sum of money against presentation to the person or bearer indicated in the check. Bills of exchange and checks are examples of securities (as a rule, to order). They are characterized by a high degree of formalism conditioning their drawing up in a valid manner, including the requirement to keep the written form of the document. The creditor is also obliged to fulfill a number of formalized duties, fulfillment of which conditions the possibility of asserting claims from the bill of exchange or check. The liability of promissory note and check debtors is unconditional. However, the most unique feature of bills of exchange and checks seems to be the fact that a bill of exchange or a check themselves may constitute a source of multiple obligations under the bill of exchange, as the act of signing them by each successive entity creates successive obligation relationships between the debtors and the current holder of the bill of exchange or check.

An ordinary bequest in a will is a type of disposition made by a testator in his or her will in the event of their death. This way a statutory or testamentary heir is made to render a

specific property service to a specified person. The execution of a will constitutes the legal act in this case, and an ordinary bequest is only a disposition contained therein (usually one of several). Due to the fact that it is a legal act *mortis causa*, it takes effect upon the death of the testator. A characteristic feature of a simple bequest is that the obligation between the heir and the legatee is created by the testator (in a way, a third party). A simple bequest is regulated in the part of the Civil Code devoted to succession law. The regulations of succession law and law of obligation are thus intertwined in this institution.

The disposition of a savings deposit in case of death is similar to an ordinary bequest in a will in that it also constitutes a disposition of property in case of the death of the testator - the account holder. It is therefore also a legal act *mortis causa*. It is one of several statutory exceptions that allows disposing of property on death without taking the form of a will. It is regulated in only two articles of the Banking Law. A characteristic feature of the discussed institution is its dependence on the existence of another bond, which has its source in the bank account agreement. Under a bank bequest, the holder of a savings account, savings and checking account, or savings term deposit account may instruct the bank where the account is accountable to pay out a specified sum of money to his or her next of kin after their death.

The paper has attempted to extend and order the catalog of named unilateral legal acts that may constitute the source of obligations. For this purpose, the last subsection analyses unilateral legal acts other than those mentioned above, which are regarded by some doctrine representatives as being able to create obligation relationships. This category finally includes other dispositions in case of death regulated in the act. These are: disposition of member's deposits and savings in credit unions, disposition of funds accumulated in pension accounts, disposition of shares in a cooperative and disposition of units in an open-end investment fund (all in case of the disposer's death), as well as guarantee in case of sale, acceptance of a transfer and correction of inaccurate or unreliable information in a press release. The institution of testamentary instruction was excluded.

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