

Abstract of a doctoral thesis

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The doctoral thesis of *magister* Łukasz Stępkowski, entitled „*Uprawnienia procesowe przedsiębiorstwa w zakresie prawa Unii Europejskiej dotyczącego pomocy państwa [Procedural rights of an undertaking in the scope of the law of the European Union on State aid]*” has been drawn up through the use of the formal – dogmatic method, with elements of the empirical method. The thesis includes an analysis of over 1000 decisions of the Court of Justice of the European Union (either of the Court of Justice, or of the General Court), a research question, and conclusions.

The research question of this dissertation stipulates that the contents of procedural rights of an undertaking in the area of State aid is asymmetrical, dependent on the principle of effectiveness of the law of the European Union. This asymmetry manifests where the performance of those rights of an undertaking serves to safeguard the effectiveness of Union law (*private enforcement*); then, the contents of those rights is either extended in regard to their “normal” scope, or there appears a new right for such an undertaking. However, where an undertaking would intend to make use of its rights to the detriment of effectiveness of Union law, for instance by making the purpose of a given rule of State aid law impossible to achieve, the rights of such an undertaking would be restricted. This includes the narrowing of possibilities to effectively invoke the fundamental rights, as rules of EU law, by a given undertaking.

A supplementary research question stipulates that the law of the Union on State aid is at that moment of development, where an individual (i.e. a subject of rights and duties) is a *direct* addressee of duties flowing from the rules of that law. However, it has not been hitherto expressly affirmed, that fundamental rights protected under the law of the European Union bring for an individual additional rights, self-standing in regard to those rights which have been vested into it by the rules of State aid law. In light of that, as a supplementary research question, it needs to be ascertained whether the law of the European Union on State aid finds itself on

that stage of development, on which EU antitrust law once was at the moment when decisions in *Hoechst*¹ and *Orkem*² were made by the Court of Justice. That case-law provided foundations for the requirements of fundamental rights protection in general competition law. This thesis analyses whether analogous case-law has been already decided in the specific area of State aid law.

Four chapters of the thesis contain an analysis of substantive issues, sources of procedural rights (either more general rules, or specific rules of State aid law), an analysis of procedures (either those constituted under Union law, or those remaining within the procedural autonomy of Member States, and an ending. The thesis is focused on procedural issues, but Chapter I does contain an interpretation of the rule constituted by Article 107(1) TFEU.

By way of a conclusion, the research questions referred to above are proven true. In fact, the undertaking remaining in the scope of State aid law is still considered to be a source of evidence for the Commission, as far as administrative proceedings are concerned. Nevertheless, State aid law has already introduced obligations imposed on an undertaking. This includes the possibility of imposing fines, periodic penalty payments, and interfering with business secrets of an undertaking.

It may be noted that State aid law contains a possibility of private enforcement of the prohibition to grant illegal State aid. Those follow from Article 108(3)(3) TFEU, whereunder a directly effective and directly applicable rule of EU law is found. This thesis contains an analysis of the nature of the rule flowing from Article 108(3)(3), and of the respective procedural rights to which an undertaking invoking that rule is entitled. At the same time, the thesis includes an analysis of the procedural situation of the undertaking which is a beneficiary of State aid. It follows from the case-law of the Court of Justice of the European Union that the beneficiary is treated less favourably than the individual who would invoke Article 108(3)(3) TFEU (or Article 108(2) TFEU) in a manner that would corroborate the effectiveness of a rule flowing from Article 108(3)(3) TFEU, read together with Article 107(1) TFEU.


The dissertation includes an attempt at providing means of using extant rules of Polish law in order to safeguard the effectiveness of that rule – in civil proceedings, administrative proceedings, and in judicial administrative proceedings. This also applies to the possibility of

¹ Judgment of the Court of 21 September 1989, joined cases 46/87 and 227/88 *Hoechst AG/Commission*, EU:C:1989:337, para. 28

² Judgment of the Court of 18 October 1989, case 374/87 *Orkem/Commission*, EU:C:1989:387, para. 34.

viewing breaches of Article 108(3)(3) TFEU as acts of unfair competition, as provided under Article 3(1) of the Act of 16 April 1993 on combating unfair competition, which constitutes a reference to German law. The thesis is finished by an ending, which contains conclusions *de lege lata* and *de lege ferenda*, followed by a list of cited literature.

Signature

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