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Summary of doctoral dissertation:
"Liability for the execution of payment transactions"
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Economic turnover is increasingly based on non-cash payment transactions, in particular initiated and carried out electronically and remotely (e.g. internet or mobile payments). The rules of such payments and the liability of providers and users for the execution of these transactions are regulated in the Polish Payment Services Act, which is an implementation of the Second Payment Services Directive (PSD2).

The payment services market is developing rapidly in terms of technological innovations. This inherently entails new risks for trading participants, both providers and users, including consumers. A consequence of the increasing use of modern forms of payment is the development of crime in this area. The risk of fraud and unauthorised transactions is arising from the difficulties related with the remote verification of the user's (customer's) identity.

Despite the development of alternative payment methods, in the near future, payment transactions will continue to be the basic method of payment for the purchase of goods and services. Therefore the issue of mutual liability under the Polish Payment Services Act (and in a broader scope, under PSD2), will be the main subject of civil law disputes between providers and users. Hence, the subject of the work is an analysis of the provisions of civil law, under the Polish Payment Services Act, that regulate liability of providers and users for the execution of payment transactions on grounds of a payment service agreement.

Admittedly, the literature concerning the payment services market is quite extensive. However, studies that would comprehensively address the issue of liability for the execution of payment transactions under the provisions of the Polish Payment Services Act and even more so, taking into account changes resulting from the implementation of PSD2 which were introduced relatively recently, are very rare. Therefore, the subject of the work aims at a regulatory area that is recognized to a small extent, and additionally raises numerous interpretative doubts, as well as doubts regarding correct application of the provisions in practice, as evidenced by the analysis of the jurisprudence of the courts.

The work presents a review and comparative analysis of the applicable national and EU law regulating the provision of payment services. The considerations contained in the dissertation are based on the analysis of the views of the doctrine presented in publications in form of scientific articles, comments and monographs in the field of banking, financial market as well as consumer protection (and more broadly, customer protection). Documents published by EU and national authorities supervising the activity of payment service providers were also subject of a detailed analysis in the work. In the empirical part of the dissertation, the extremely extensive jurisprudence of Polish, the CJEU and German courts was taken into account and subjected to critical analysis.

The main thesis of the dissertation states that the emergence and constant development of electronic and remote payments has led to the formation of an autonomous legal regulation in relation to general civil law, the aim of which is to burden providers with the risk of liability for fraudulent (unauthorised) payment transactions, not only if the provider is at fault, but also if it is not at fault.

The first and second chapters discuss the key problem issues related to the process of initiating payment transactions with the use of payment instruments, namely the process of strong customer authentication (SCA) and the issues of the authorization of transactions. Although no transfer of funds takes place at this stage, the actions and omissions of users and providers have a fundamental impact on whether the transaction will be properly executed. In result, in the case of many disputes between providers and users, exactly those processes are decisive for determining the party bearing civil liability for the execution of payment transactions and its scope.

In chapters three to five, three categories of legal grounds for liability under the Polish Payment Services Act are being analysed, namely:

- liability for non-execution or improper execution of a transaction (the transaction was authorized and the correct unique identifier was provided),
- liability for the execution of a transaction with an incorrect unique identifier (the transaction was authorized but an incorrect unique identifier was provided, usually the payment account number), and
- liability for the execution of an unauthorised transaction (the transaction was not authorised).

Currently, the most common and the most complicated (both in terms of theory and practice) is the issue of unauthorised payment transactions and consequently the determining of the division and scope of liability of the provider and the payer in this respect. In result those issues are being analysed in the most extensive – fifth – chapter of the work.

The work ends with a chapter covering the key conclusions and comments *de lege ferenda*.

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