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## Notes on the Invalidity of a Legal Transaction Contrary to the Principles of Community Life in Polish Civil Law – Against the Background of Court Jurisprudence

**[Uwagi o nieważności czynności prawnej sprzecznej z zasadami współżycia społecznego w polskim prawie cywilnym – na tle orzecznictwa sądowego]**

### Abstract

The purpose of this article is to analyze the judicial application of civil law in assessing the content of legal transactions from the point of view of the general clause of principles of community life. The starting point for detailed consideration is to determine the system of extra-legal values on which Polish civil law is based. The importance of equity and justice in civil law relations becomes apparent through judicial review of the content of legal transactions. The consequence of the contradiction of the content or purpose of a legal transaction with the fundamental values referred to in the clause of principles of community life is the invalidity of such a transaction. The main conclusion of the article is that when the need to protect the social interest falls away and the legal transaction – which is an expression of the subject's private law autonomy – is in accordance with positive law, it is in principle not subject to review from the point of view of compliance with the principles of community life. The conclusions also emphasize that the role of the court is to perceive and articulate in a given case the fundamental social values of truth, goodness and justice, the realization of which civil law is also supposed to serve.

**Keywords:** legal transaction, civil law, principles of community life, general clause, invalidity of a legal transaction, court jurisprudence.

## Preliminary Notes

Civil law is based on a foundation of values that include the autonomy of private subjects, the guarantee and protection of property and personal inte-

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rests through subjective rights (powers), and the pursuit of equity in civil-law relations.<sup>1</sup> The latter value materializes through courts' application of the general clause of principles of community life, also as a tool to control the conduct of legal subjects performing legal transactions.<sup>2</sup> In cases covered by Article 58(2) of the Civil Code, which stipulates that a legal transaction contrary to the principles of community life is invalid, certain ethical assumptions of the civil law system are the basis for the control of declarations of intent from the point of view of compliance with extra-legal norms. Judicial review of legal transactions involves verification of their content and purpose combined with the application of the sanction of invalidity. The basis for ruling on the invalidity of a legal transaction is the court's finding<sup>3</sup> that the transaction contradicts the principles of community life, that is, contradicts the essential values covered by that general clause.<sup>4</sup> Any attempts to draft a list of values or moral norms that implement them, which should be taken into account when determining whether a legal transaction contradicts the principles of community life, is inevitably doomed to failure. This is primarily because the values to which the principles of community life refer evolve with changes in social relations and consciousness, and because filling in the content of the principles of community life must be limited in scope, as general clauses are introduced to break away from the rigidity of positive law.<sup>5</sup> In addition, an evaluation of a legal transaction through the lens of the principles of community life requires taking into account several different values that, if a given legal transaction contradicts them, cause that transaction to be discredited morally.<sup>6</sup>

The review of legal transactions under Article 58(2) of the Civil Code constitutes an application of positive law; however, due to the reference contained

<sup>1</sup> See: K. Doliwa, *Pozytywizm prawniczy a zasada słuszności* [Legal Positivism and the Principle of Equity], 'Białostockie Studia Prawnicze' 2014, book 17, pp. 89ff.

<sup>2</sup> See: A. Doliwa, *Funkcje zasad współżycia społecznego w prawie cywilnym* [The Functions of the Principles of Community Life in Civil Law], Warszawa 2021, pp. 127ff.

<sup>3</sup> Article 58(2) of the Civil Code is also binding on notaries, who should refuse to perform a notarial transaction if they consider that the transaction is contrary to the principles of community life. At the same time, it is not advisable for a notary's actions in this regard to go too far, since the proceedings conducted by him or her do not in every case provide a basis for a sound decision to take into account Article 58(2) of the Civil Code. A notary should therefore limit his or her actions to cases where the contradiction to the principles of community life is obvious and unambiguous; see: resolution of the Supreme Court of December 18, 2013, III CZP 82/13.

<sup>4</sup> In the doctrine, the thesis is posed that Polish law contains a global norm that imposes *ipso iure* the sanction of invalidity in cases where "a legal transaction contrary to the law or morality" is performed; see: P. Skorupka, *Nieważność czynności prawnej w prawie polskim na tle porównawczym* [Invalidity of a Legal Transaction in Polish Law in a Comparative Approach], Warszawa 2019, p. 425.

<sup>5</sup> See: A. Stelmachowski, *Zarys teorii prawa cywilnego* [An Outline of the Theory of Civil Law], Warszawa 1998, pp. 109ff.

<sup>6</sup> For information on a catalog of values protected under Article 58(2) of the Civil Code, see: Z. Radwański, R. Trzaskowski (in: Z. Radwański, A. Olejniczak (eds), *System prawa prywatnego, tom 2, Prawo cywilne – część ogólna* [Private Law System, vol. 2. Civil Law: general part], Warszawa 2019, pp. 319–330; M. Gutowski, *Nieważność czynności prawnej* [Invalidity of a Legal Transaction], Warszawa 2006, pp. 339ff.

in that article, it also constitutes a review on the basis of an extra-legal norm arising from the principles of community life. Such review can lead to the correction of a civil-law relationship by ruling on the invalidity of the legal transaction that is its source, and any threat to the security of legal transactions and to a sort of predictability of its functioning caused by that correction is justified and “compensated” by the fair result of the application of law.

Contradiction to the principles of community life as a basis for declaring a legal transaction invalid must arise from circumstances already taking place when the transaction was performed. When assessing the compatibility of a contract with the principles of community life, the reasons for concluding that contract and the circumstances surrounding its conclusion must not be overlooked.<sup>7</sup> At the same time, the validity of a legal transaction must not be assessed on the basis of the behavior of the parties to that transaction after it was performed.<sup>8</sup> This is because the subject of review is the legal transaction that takes place at the time of the declaration of intent and not the subsequent behavior (omissions), such as payment of the price or delivery of the goods, which are merely events that are manifestations of the performance of the contract.<sup>9</sup> The subject of review under Article 58(2) of the Civil Code, in addition to the content of a legal transaction, is also the purpose and effect of that transaction. As an exception, a legal transaction may also be considered contradictory to the principles of community life due to the circumstances surrounding its performance, including, in particular, the motives of the parties.<sup>10</sup> On the other hand, circumstances that occur after the conclusion of a contract, for example, the defendants’ failure to repay a loan, are not relevant to the assessment of the validity of the contract.<sup>11</sup>

Examination of the compatibility of a legal transaction with the principles of community life is not only possible, but also necessary; however, it must always be carried out taking into account the facts of the specific case (a situation-based rather than abstract assessment). As a result of such an examination, the validity of the legal transaction may be challenged.<sup>12</sup> Principles of community life can be invoked on an individual basis, and in applying the general clause of principles of community life, all circumstances of the case must be evaluated in detail.<sup>13</sup>

The jurisprudence of the Supreme Court emphasizes that in assuming that a legal transaction is contradictory to the principles of community life, it should be determined what the contradiction consists in, by whom and how

<sup>7</sup> See: judgment of the Supreme Court of December 8, 2010, V CSK 157/10.

<sup>8</sup> See: grounds for the judgment of the Administrative Court in Szczecin of April 25, 2018, I ACa 1022/17, Legalis.

<sup>9</sup> See: judgment of the Supreme Court of September 14, 2016, III CSK 339/15.

<sup>10</sup> See: judgment of the Administrative Court in Szczecin of April 25, 2018, I ACa 1022/17.

<sup>11</sup> See: judgment of the Supreme Court of January 23, 2002, II CKN 698/99.

<sup>12</sup> See: resolution of the Supreme Court of December 13, 2013, III CZP 79/13.

<sup>13</sup> See: decision of the Supreme Court of June 20, 2018, I UK 381/17.

it was caused, and what the violation itself involves. A general reference to general clauses or the values protected by them can lead to unacceptable arbitrariness in the application of law and, as a result, cause a violation of the principle of certainty of transactions, which is essential in a market economy. A contract contradicts the principles of community life only when it does not respect a certain prohibition that is deeply justified axiologically and morally, i.e. its content or purpose is morally prohibited or its content does not result from a moral norm, e.g. it violates human freedom, freedom of economic activity, equality of the parties, or free competition, or harms the family or the welfare of a child.<sup>14</sup>

Basing a claim on Article 58(2) of the Civil Code, which makes contradiction of the principles of community life by a legal transaction the basis for the invalidity of that transaction, precludes the application of Article 5 of the Civil Code to assess the compliance of a legal transaction with these principles. The latter article concerns a situation where a legal relationship already exists and the existing entitlement included in its content is valid, but during the course of the legal relationship such new circumstances have arisen that, in the light of principles of community life, oppose the assertion of the entitlement for as long as these circumstances persist. On the other hand, Article 58 of the Civil Code concerns the contradiction of a law by a legal transaction, a transaction intended to circumvent a law, or a contradiction of the principles of community life by a transaction. These are situations where a legal transaction is invalid from the beginning.<sup>15</sup>

The jurisprudence indicates that Article 58(2) of the Civil Code should be applied with restraint and not more freely than Article 5 of the Civil Code, which follows from an *a fortiori* reasoning: since the determination of abuse of a right that does not eliminate that right (does not have a permanent – peremptory effect) is allowed only in strictly established cases, the determination of the invalidity of a legal transaction that causes a permanent effect all the more so requires meeting at least the same evaluation criteria.<sup>16</sup>

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## **The Object, Purpose, and Criteria for a Review of Legal Transactions**

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Only legal transactions, i.e., civil-law (private-law) declarations of intent (see Articles 60 and 56 of the Civil Code) of natural and legal persons and other organizational units with legal personalities are subject to review under

<sup>14</sup> See: judgment of the Supreme Court of October 12, 2017, IV CSK 660/16.

<sup>15</sup> See: judgment of the Supreme Court of March 5, 2002, I CKN 934/00; judgment of the Supreme Court of January 9, 2004, IV CK 338/02.

<sup>16</sup> See: judgment of the Administrative Court in Warsaw of January 23, 2014, VI ACa 706/13.

Article 58(2) of the Civil Code. On the other hand, if some behavior of a subject is not a civil-law transaction (e.g., the commencement, suspension, or termination of business activities) or when the acquisition of some property right by a subject is not the result of a legal transaction, i.e., is not the result of a declaration of intent (e.g., the acquisition of the right to maternity benefits), then invoking Article 58(2) of the Civil Code in such a case is pointless and misguided.<sup>17</sup>

The application of Article 58(2) of the Civil Code is also permissible with regard to legal transactions creating economic relations; one can even put forward the thesis that this norm is particularly important for the creation of conditions conducive to an ethical way of doing business, and it is impossible to assume that the status of an entrepreneur or the professional nature of a large-scale business activity is an obstacle in this case.<sup>18</sup> In relations between entrepreneurs, the principles of community life should be understood as the principles of reliability and loyalty to the partner in a contract. Of particular importance here are the rules of honesty and mercantile reliability (the honesty and reliability of entrepreneurs in business and professional activities), which should be required of an entrepreneur as a professional conducting activities in the market. This involves the requirement to adhere to good morals and the principles of fair transactions, reliable conduct, loyalty, and trust.<sup>19</sup>

The jurisprudence emphasizes that any contract, including one that complies with law, is subject to evaluation from the point of view of Article 58(2) of the Civil Code. This evaluation should always be made with reference to the circumstances of each individual case.

As a rule, the jurisprudence rejects the view that the warranty of public credibility of land and mortgage registers prevents challenging the validity of a contract on the basis of Article 58(2) of the Civil Code if the contract contradicts the principles of community life, if a right (e.g., ownership) to a property was disclosed in the land and mortgage register on the basis of the contract. At the same time, the jurisprudence recognizes the need to weigh the values and protect the interests and rights of parties to subsequent contracts concluded in the course of further trading in the property.<sup>20</sup>

It must be emphasized that in view of the need to preserve the security and certainty of legal transactions, the general clause of principles of community life as a basis for reviewing a legal transaction and declaring it invalid should be used in exceptional cases in which this has a strong axiological justification. There must be special circumstances in favor of declaring the invalidity of a legal transaction on the grounds that it is inconsistent with the principles

<sup>17</sup> See: judgment of the Supreme Court of October 24, 2017, I UK 220/17.

<sup>18</sup> See: judgment of the Supreme Court of February 24, 2016, I CSK 269/15.

<sup>19</sup> See: K. I. Kopaczyńska-Pieczniak, *Zasada uczciwości kupieckiej jako zasada prawa handlowego* [The Principle of Mercantile Honesty as the Principle of Commercial Law], *‘Studia Iuridica Lublinensia’* 2016, 1, pp. 168ff.

<sup>20</sup> See: judgment of the Supreme Court of January 24, 2004, III CKN 405/99.

of community life. This is a situation where the invalidity of a contract due to its contradiction to the principles of community life, in particular to the principle of fairness, is quite evident and apparent *prima facie*. This conclusion may arise from a glaring imbalance in the equivalence of the services provided by the parties to a contract, which is visible even at first glance.<sup>21</sup>

The incompatibility of a legal transaction with the principles of community life takes place when the content or purpose of the legal transaction and its legal effects are irreconcilable with these principles, as well as when the transaction is performed in order to circumvent the principles of community life.<sup>22</sup> It is not enough to cite a violation of the principles of community life in general, but also it is not necessary to indicate which specific principle has been violated;<sup>23</sup> instead, it is necessary, by reference to the circumstances of the case, to specify which element of the case (the motive for the behavior of the parties to the legal transaction, the content of that transaction or its purpose and effect) is contrary to the values that are generally recognized and accepted in the society and that determine the principles of decent and fair community life.<sup>24</sup>

In the jurisprudence of the Supreme Court, it is a well-established view that setting an abnormally high salary for work may be considered invalid in specific circumstances as having been made in violation of the principles of community life, which consists in the intentional achievement of unjustified benefits from the social security system at the expense of other participants in that system.<sup>25</sup> The general clause of principles of community life is also violated by a contract to the extent that it restricts a party's freedom of business activity, which makes it invalid.<sup>26</sup> Therefore, a contradiction to the principles of community life may consist in a violation of the fundamental structural principle of civil-law relations, i.e. the principle of entrepreneurial freedom. Also, stipulating an excessively high interest rate in a loan agreement between individuals that is not justified either by inflation or by the profits earned in a normal, reasonably run business may contradict the principles of community life.<sup>27</sup> Such a burden on the borrower may turn out to be ruinous for him or her, while the lender gains benefits that cannot be justified by any rationale. A glaring imbalance in the equivalence of services determines the presence of a contradiction to the principles of community life.<sup>28</sup>

<sup>21</sup> See: judgment of the Supreme Court of October 13, 2005, IV CSK 162/05.

<sup>22</sup> See judgment of the Administrative Court in Cracow of September 7, 2018, I AGa 178/18.

<sup>23</sup> Cf. the judgment of the Supreme Court of October 12, 2017, IV CSK 660/16.

<sup>24</sup> Cf. the grounds for the judgment of the Administrative Court in Katowice of February 6, 2018, I ACa 907/17.

<sup>25</sup> See: resolution of the Supreme Court of April 27, 2005, II UZP 2/05; judgment of the Supreme Court of August 4, 2005, II UK 16/05; judgment of the Supreme Court of August 9, 2005, III UK 89/05; judgment of the Supreme Court of October 18, 2005, II UK 43/05; judgment of the Supreme Court of June 1, 2017, I UK 253/16; judgment of the Supreme Court of June 13, 2017, I UK 259/16.

<sup>26</sup> See: judgment of the Supreme Court of May 20, 2004, II CK 354/03.

<sup>27</sup> See: judgment of the SA in Łódź of July 1, 2016, I ACa 39/16.

<sup>28</sup> See: judgment of the Supreme Court of October 13, 2005, IV CSK 162/05.

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## **An Assessment of the Content or Purpose (Effects) of a Legal Transaction**

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A review under Article 58(2) of the Civil Code concerns primarily the content of a legal transaction. However, when assessing the inconsistency of a legal transaction with the principles of community life, the content of the transaction cannot be separated from the reasons that caused it. The content of a legal transaction may not contradict the principles of community life, but due to the circumstances surrounding its performance, including in particular the motives of the parties, the legal transaction may be considered inconsistent with the principles of community life.<sup>29</sup> For example, if an assessment of the facts and reasons for the conclusion of a donation agreement leads to a finding that the powers vested by virtue of the performance of public tasks were abused and an administrative decision that was favorable to a party and conditional on a material benefit for the administrative body was made, then this should be considered a violation of such accepted principles (and the values they protect) as the principle of equality of parties and, most importantly, the principle of loyalty and fairness to citizens, which are binding on public authorities. In accordance with the legally accepted general clause of the principles of community life, such an action cannot be approved of (socially and legally), which provides a basis for finding the donation agreement invalid.<sup>30</sup> Usually, however, it is not the motivation of the parties but the content of the contract or agreement that determines its validity from the point of view of Article 58(2) of the Civil Code. It should be emphasized that the motives may be relevant to the validity of a legal transaction insofar as they merit a particularly negative evaluation from the point of view of the principles of community life (or other legislation providing for the sanction of invalidity; see, e.g., Article 83 of the Civil Code).<sup>31</sup> For example, the exercise by a pro-environmental association of its right to appeal against decisions in administrative proceedings in order to prolong the procedure for obtaining the relevant permits so as to induce the entrepreneur concerned to donate money for a purpose specified by the association results in the invalidity of the agreement concluded on this subject, as it contradicts the principles of community life (Article 58[2] of the Civil Code).<sup>32</sup>

In addition to the content of the legal transaction, what is also important to the assessment of whether the case referred to in Article 58(2) of the Civil Code is taking place is the purpose and effect of the transaction, and in particular whether the transaction results in an entitlement or obligation, the fulfill-

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<sup>29</sup> See: judgment of the Administrative Court in Szczecin of April 25, 2018, I ACa 1022/17.

<sup>30</sup> See: judgment of the Supreme Court of September 13, 2001, IV CKN 475/00.

<sup>31</sup> See: judgment of the Administrative in Warsaw of December 20, 2013, VI ACa 740/13.

<sup>32</sup> See: judgment of the Supreme Court of November 10, 2004, II CK 202/04.

ment of which creates a state of affairs that is inconsistent with the principles of community life. Thus, the parties to a legal transaction are expected to act honestly, loyally, and in accordance with the purposes that their declarations of intent are to serve.<sup>33</sup> However, the incompatibility of the purpose of a transaction with the principles of community life leads to the invalidity of that transaction when that purpose was known to both parties to the transaction and the parties accepted the fact that the transaction would have consequences that violate moral norms.<sup>34</sup>

The incompatibility of a legal transaction with the principles of community life occurs when the parties have shaped the content of the transaction in a manner that is aimed at achieving an objective that, although it falls within the scope of the legal effects produced by the transaction on the basis of substantive law (a provision of a statute), must be found unacceptable from the point of view of justice. It should be assumed that, as in the case of a transaction aimed to circumvent the law, the awareness of the participants in a legal transaction is necessary and must include at least the inevitability of the occurrence of an effect that is contradictory to the principles of community life.<sup>35</sup>

Another example of an inconsistency of the purpose of a contract with the principles of community life is the use by the parties to the contract of a collateral assignment agreement to achieve an objective different from that for which the contract was concluded. In that agreement, the debtor transfers ownership of an item to the creditor to secure the performance of an obligation, and not to enable the creditor to acquire ownership of the item in exchange for the secured claim corresponding to only a portion of the item's value without an appropriate settlement and in excess of a value that satisfies the creditor's interest, and thus in a way that provides the creditor with grossly excessive and unjustifiable profits. In other words, the construction of the security rights cannot serve the purpose of the creditor taking ownership of the collateral in order to make a profit on its sale or to retain its ownership for a price that is much lower than its market value. Such an attitude on the part of the creditor would have to be found reprehensible from the point of view of the principles of fair transactions, since it is aimed to gain unjustified profits at the expense of the debtor whose economic situation forces him or her to take up a loan from a source other than a bank, using the dwelling where he or she resides as collateral.<sup>36</sup>

Therefore, in order to assess whether the case referred to in Article 58(2) of the Civil Code has occurred, in addition to the content of the legal act, its purpose and effect are also relevant, and in particular such assessment requires

<sup>33</sup> See: judgment of the Supreme Court of February 25, 2004, II CK 34/03.

<sup>34</sup> See: Z. Radwański [in:] Z. Radwański (ed.), *System prawa prywatnego*, tom 2, *Prawo cywilne – część ogólna* [Private Law System, vol. 2. Civil Law: general part], Warszawa 2002, pp. 243–244.

<sup>35</sup> See judgment of the Administrative Court in Cracow of September 7, 2018, I AGa 178/18.

<sup>36</sup> See: judgment of the Supreme Court of March 31, 2016, IV CSK 372/15.



the determination of whether the performance of the legal transaction results in an entitlement or obligation, the fulfillment of which creates a state of affairs that contradicts the principles of community life.<sup>37</sup>

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## A Review of Legal Transactions on the Basis of Criteria Other than the Principles of Community Life

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The wording of Article 58 of the Civil Code indicates that in the course of its application it is necessary to follow the sequence of grounds for a review of legal transactions adopted therein. A disputed legal transaction should therefore first be evaluated to determine whether it violates a law or is intended to circumvent a law, and only later, in the event of a negative result of the first evaluation, can it be reviewed to determine whether it contradicts the principles of community life.<sup>38</sup> If it is found that the prerequisites for the invalidity of a legal transaction due to its non-compliance with a law are met, it is no longer necessary to determine whether the transaction contradicts the principles of community life.<sup>39</sup> For example, an assessment under Article 58(2) of the Civil Code can be made only for an actual contract, and not a sham contract; invalidity due to the circumstances listed in Article 58(2) of the Civil Code does not include the sham nature of legal transactions, since a separate regulation is provided for this characteristic as a cause of invalidity in Article 83(1) of the Civil Code.<sup>40</sup>

The jurisprudence also includes many comments on the relationship between the constructs of invalidity of a legal transaction due to its inconsistency with the principles of community life (Article 58[2] of the Civil Code) and exploitation (Article 388 of the Civil Code). Generally speaking, two positions are presented in these cases: the first is that the prerequisites of the two institutions cannot intersect,<sup>41</sup> and the second is that the Article 388 of the Civil Code is special and may be subject to “absorption” into Article 58 of the Civil Code.<sup>42</sup> As for the first position, it can be pointed out, by way of example, that the unequal distribution of the risks and benefits in a currency option contract and the inequality of the services of the parties, one of which is a bank, does not automatically mean a violation of the principles of contractual equity and fair transactions that would cause the contract to be invalid under Article 58(2) of the Civil Code. The Supreme Court held that the facts of the case lac-

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<sup>37</sup> See judgment of the Administrative Court in Cracow of September 7, 2018, I AGa 178/18.

<sup>38</sup> See: P. Skorupka, *Nieważność* [Invalidity...], p. 478.

<sup>39</sup> See: decision of the Supreme Court of November 28, 2000, IV CKN 17/00.

<sup>40</sup> See: judgment of the Supreme Court of November 9, 2004, II CK 194/04.

<sup>41</sup> See: judgment of the Supreme Court of September 19, 2013, I CSK 651/12.

<sup>42</sup> See: judgment of the Supreme Court of January 14, 2010, IV CSK 432/09.

ked grounds for the application of Article 388 of the Civil Code, i.e. there was no exploitation on the part of the defendant, due to the plaintiff's failure to meet the subjective prerequisites of this defect in the legal transaction. In the opinion of the Supreme Court, this opens the possibility of applying Article 58(2) of the Civil Code, if the prerequisites provided for by that article are met, since, by definition, the scopes of application of exploitation and absolute invalidity of a legal transaction that is contradictory to the principles of community life cannot intersect.<sup>43</sup> In contrast, the second position is based on the reasoning that a contract that violates the principle of equivalence, in the case of a gross disproportion between the services provided by each party, can be assessed in light of the provisions of Article 58(2) of the Civil Code, especially when not all the prerequisites of exploitation provided for in Article 388(1) of the Civil Code have been met. Consequently, if the prerequisites of exploitation are not met, it is possible to consider the application of Article 58(2) of the Civil Code, if the legal conditions for the application of that article are met. In such cases, it is assumed that Article 388(1) of the Civil Code constitutes *lex specialis* in relation to the general Article 58(2) of the Civil Code.<sup>44</sup> Therefore, in principle, a contract can be assessed as invalid under Article 58(2) of the Civil Code, even though not all the prerequisites of exploitation, as defined in Article 388(1) of the Civil Code, have been met. However, this depends on the demonstration of such factual circumstances that would allow the parties' contract to be considered contradictory to the principles of community life, in particular consisting in such a violation of the principle of fairness and reliability of contracts, by taking advantage of the forced position of the counterparty, that they would result in the invalidity of the legal transaction.<sup>45</sup>

In principle, the provisions of Article 388 of the Civil Code should be considered special in relation to Article 58(2) of the Civil Code,<sup>46</sup> which also applies to cases in which there is a gross disproportion between the main services provided by each party.<sup>47</sup> This is based on the assumption that the sanction of revocability provided for in Article 388 of the Civil Code is more favorable to the exploited person, who may want to maintain the validity of the contract and keep the service received. On the other hand, in courts' practice, a wider use of Article 58(2) of the Civil Code and the related marginalization of the special regulation are noticeable, which is dictated by the need to provide the weaker party with more effective protection than that provided by Article 388 of the Civil Code. Indeed, the protective value of the latter article can

<sup>43</sup> See: judgment of the Supreme Court of September 19, 2013, I CSK 651/12.

<sup>44</sup> See: judgment of the Supreme Court of October 8, 2009, II CSK 160/09 and the judgment of the Supreme Court of January 14, 2010, IV CSK 432/09.

<sup>45</sup> See: judgment of the Administrative Court in Cracow of January 15, 2014, I ACa 1363/13; cf. the judgment of the Administrative Court of May 22, 2012, I ACa 1020/11.

<sup>46</sup> See: judgment of the Supreme Court of October 8, 2009, II CSK 160/09.

<sup>47</sup> See: judgment of the Supreme Court of June 15, 2018, I CSK 491/17.

only materialize if the weaker party becomes aware within an appropriate, relatively short period of time of the occurrence of the prerequisites of exploitation and the rights to which it is entitled as a result, and demonstrates the required procedural activity. In many cases, it is already clear at the time of the conclusion of the contract that such activity cannot be counted on (e.g., the subjective weakness of the exploited party is permanent or the gross contractual imbalance is difficult to see and its negative effects become evident only in the long term), which may justify recourse to Article 58(2) of the Civil Code and the application of more effective sanctions, starting with invalidity, which does not necessarily have to harm the interest of the exploited party (e.g., when the contract was concluded on the initiative of the exploiting party and in his or her interest, and the benefit due to the exploited party was not – and was not to become – indispensable to it). This means, therefore, that there may be a situation in which the same contract contains provisions that are contradictory to the principles of community life and have the characteristics of exploitation.

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### **The Effects of the Inconsistency of a Legal Transaction with the Principles of Community Life**

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The effect of the inconsistency of a legal transaction with the principles of community life provided for in Article 58(2) of the Civil Code is its invalidity (absolute invalidity).<sup>48</sup> In this case, the legislature applied the most severe sanction of defectiveness of a legal transaction, with the aim to prevent the emergence of legal relations whose content is incompatible with the basic moral norms prevailing in the society, and thus also to protect the interests and values covered by the principles of community life clause.<sup>49</sup> The invalidity of a legal transaction occurs from the moment of its performance (*ab initio*), so that an invalid legal transaction does not produce the legal effects intended by the parties, arising from a law or established customs. It should be noted at the same time that if a legal transaction contradicts the principles of community life then, unlike Article 58(1) of the Civil Code with regard to violation of a law by a legal transaction, Article 58(2) of the Civil Code does not stipulate the possibility of an effect other than invalidity of the transaction. However, according to the principle of interpretation *lex specialis derogat legi generali*, the sanction of invalidity of a legal transaction that contradicts the

<sup>48</sup> See: M. Gutowski, Z. Radwański [in:] Z. Radwański, A. Olejniczak (eds), System..., tom 2 [Private..., vol. 2], pp. 543ff; P. Skorupka, Nieważność... [Invalidity...], pp. 313ff.

<sup>49</sup> See: J. Preussner-Zamorska, Nieważność czynności prawnej w prawie cywilnym [Invalidity of a Legal Transaction in Civil Law], Warszawa 1983, p. 76; M. Wilejczyk, Zagadnienia etyczne części ogólnej prawa cywilnego [Ethical Issues in the General Part of Civil Law], Warszawa 2014, pp. 350ff.

principles of community life is ruled out by regulations providing for a sanction other than absolute invalidity of the transaction, such as the sanction of relative ineffectiveness (see Articles 59 and 527 of the Civil Code). However, the application of the sanction of absolute invalidity is justified in certain real situations that are suitable for subsumption under the norms set forth in Articles 59 or 527 of the Civil Code in the event of significant intensity of the gross harm to the other party, and thus gross violation of the principles of community life.<sup>50</sup>

Absolute invalidity of a legal transaction may be invoked by anyone whose interest is violated by a concluded contract that is subject to the sanction of invalidity.<sup>51</sup> The invalidity of a legal transaction is taken into account by courts *ex officio*, even if such a claim is not made in a party's procedural action (action, appeal). A judgment establishing the absolute legal invalidity of a legal transaction (or an element of the content of that transaction) at the time of its performance is declaratory and has retroactive effect (*ex tunc*). The invalidity of a legal transaction due to its inconsistency with the principles of community life may also be declared in a ruling issued in a trial aimed to establish such invalidity (Article 189 of the Code of Civil Procedure). In such a trial, the substantive-law prerequisite for an lawsuit is the demonstration of a legal interest understood as an objective (i.e., actually existing), and not merely hypothetical (i.e., existing in the subjective opinion of a party), legal need to obtain a judgment of appropriate content, which occurs when a situation of actual violation or threat of violation of a specific legal norm has arisen. A legal interest occurs when the very effect produced by the finality of the judgment establishing invalidity ensures the protection of the plaintiff's legally protected interests, i.e. definitively ends an existing dispute or prevents the emergence of such a dispute in the future, and at the same time this interest is not subject to protection by any other means.<sup>52</sup>

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## Summary and Conclusions

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The controlling function of the principles of community life in relation to legal transactions, as outlined above, consists in the individualized intervention of equity in the specific behavior of the parties to civil-law relations, rather than in an abstract intervention directed against the content of law. A review of legal transactions through the lens of the criteria embodied in

<sup>50</sup> See: judgment of the Supreme Court of April 18, 2013, II CSK 557/12; judgment of the Supreme Court of September 14, 2016, III CSK 339/15.

<sup>51</sup> See: judgment of the Supreme Court of December 17, 2015, I CSK 1033/14.

<sup>52</sup> See: judgment of the Administrative in Warsaw of July 24, 2017, VI ACa 577/16; judgment of the Administrative Court in Gdańsk of March 8, 2016, I ACa 961/15.

the principles of community life involves recourse to morality; the role of the reviewing court is to notice and articulate in a given case the fundamental values of truth, goodness, and justice, the realization of which the law is supposed to serve.<sup>53</sup>

Any legal transaction is subject to such review; this judicial review is conducted on the basis of a legal norm that limits the validity of a legal transaction depending on the relationship between that transaction and the principles of community life. The review function of the principles of community life in relation to legal transactions consists in distinguishing between valid and invalid transactions, depending on whether the legal transaction under review is in conflict with these principles.<sup>54</sup> The sanction of invalidity results from a violation of the principles of community life by the entity under civil law that performed the challenged legal transaction. The court examines both the content and purpose of the challenged legal transaction, as well as its effects.<sup>55</sup> In such cases, the need to act in accordance with non-statutory (moral) norms or standards implies a legitimate limitation placed on the autonomy of will.<sup>56</sup> Article 58(2) of the Civil Code allows the implementation of the review function of the principles of community life, which is carried out both in the individual interest of the affected party to a civil law relationship (as a form of protection of his or her subjective rights) and in the general (social, public) interest.<sup>57</sup> If, on the other hand, the need to protect the public interest no longer exists and the legal transaction, which is an expression of the private-law autonomy of the subject who performed it, complies with positive law, then as a rule the transaction is not subject to a review from the point of view of its compliance with the principles of community life.<sup>58</sup> This implies the assumption of axiological consistency of the legal system, from which it follows that, as a rule, a legal transaction that complies with law also complies with the principles of community life. The refutation of such an assumption, leading to the determination of the inconsistency of a specific legal transaction with the principles of community life, is only possible after examining the premises and effects of the declarations of intent made and the situational context in which the parties' declarations were made.<sup>59</sup>

Article 58(2) of the Civil Code refers to an equitable right determined *ad hoc* by the court hearing the case. This is a general clause that appeals to the judge's reasonableness, decency, and good taste without specifying *a priori*

<sup>53</sup> See: A. Doliwa, *Funkcje...* [The Functions...], *ibid.*

<sup>54</sup> See: M. Gutowski, *Nieważność czynności prawnej* [Invalidity of a Legal Transaction], pp. 330ff.

<sup>55</sup> See: judgment of the Administrative Court in Szczecin of April 25, 2018, I ACa 1022/17.

<sup>56</sup> See: P. Skorupka, *Nieważność...* [Invalidity...], p. 478.

<sup>57</sup> See: judgment of the Supreme Court of October 12, 2017, IV CSK 660/16.

<sup>58</sup> See: judgment of the Supreme Court of March 16, 2018, IV CSK 302/17.

<sup>59</sup> See: judgment of the Supreme Court of March 2, 2012, II CSK 351/11.

the content of the principles of community life. The scope of transactions that are inconsistent with the principles of community life is therefore indefinite and variable, just as the social environment in which legal transactions, and subsequently their axiological evaluation, are conducted. As the Supreme Court put it, this is “a question of factual context, i.e. the circumstances of a particular case, and any attempt to make generalizations that are relevant to every situation would be doomed to failure in advance.”<sup>60</sup> It should be emphasized that the *sine qua non* condition for examining a legal transaction in terms of its inconsistency with the principles of community life (Article 58[2] of the Civil Code) is establishing the legality of the transaction (Article 58[1] of the Civil Code).<sup>61</sup>

### Uwagi o nieważności czynności prawnej sprzecznej z zasadami współżycia społecznego w polskim prawie cywilnym – na tle orzecznictwa sądowego

#### Abstrakt

Celem artykułu jest analiza sądowego stosowania prawa cywilnego w zakresie oceny treści czynności prawnych z punktu widzenia klauzuli generalnej zasad współżycia społecznego. Punktem wyjścia do szczegółowych rozważań jest ustalenie systemu wartości pozaprawnych, na których opiera się polskie prawo cywilne. Znaczenie słuszności i sprawiedliwości w stosunkach cywilnoprawnych uwidacznia się przez sądową kontrolę treści czynności prawnych. Następstwem sprzeczności treści lub celu czynności prawnej z podstawowymi wartościami, do których odwołuje się klauzula zasad współżycia społecznego, jest nieważność takiej czynności. Zasadniczą konkluzją artykułu jest to, że gdy odpada potrzeba ochrony interesu społecznego, a czynność prawna – będąca wyrazem autonomii prywatnoprawnej podmiotu – jest zgodna z prawem pozytywnym, to w zasadzie nie podlega ona weryfikacji z punktu widzenia zgodności z zasadami współżycia społecznego. We wnioskach podkreślono ponadto, że rolą sądu jest dostrzeżenie i wyartykułowanie w danej sprawie fundamentalnych wartości społecznych: prawdy, dobra i sprawiedliwości, których urzeczywistnieniu ma także służyć prawo cywilne.

**Słowa kluczowe:** czynność prawna, prawo cywilne, zasady współżycia społecznego, klauzula generalna, nieważność czynności prawnej, orzecznictwo sądowe.

<sup>60</sup> See: resolution of the Supreme Court of September 29, 1987, III CZP 51/87.

<sup>61</sup> See: judgment of the Supreme Court of April 19, 2006, II CSK 306/05.

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