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ON THE NEED TO CONSIDER THE POSSIBILITY OF DIRECT REDRESS AGAINST SUBCONTRACTORS IN SELECTED SERVICE CONTRACTS

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Abstract. The article discusses the issue of subcontracting in service contracts, with particular emphasis on the possibility of direct redress by creditors against subcontractors. Polish civil law stipulates a rule according to which the creditor may seek redress only from the debtor but not from subcontractors. Exceptions to this rule are provided for in few provisions (Article 738(2) or Article 840 CC) that introduce joint and several liability of the debtor and the subcontractor. In practise, this means that the creditor may directly pursue claims also from the subcontractor. International transport law has also adopted a measure of joint and several liability of the debtor (contracting carrier) and its subcontractor (operating carrier) for damage caused by the latter, allowing creditors to pursue claims directly from subcontractors. Such a measure shortens the settlement process, increases the efficiency of pursuing claims and introduces clarity in the debtor-subcontractor relationship. It reduces the risk of insolvency of the debtor, and in many cases allows him to avoid involvement in the dispute. At the same time, the author emphasises that the joint and several liability of the debtor and the subcontractor does not compromise the situation of the subcontractor. In the event that the debtor and the subcontractor are jointly and severally liable, the debtor's claim is regressive, it arises only after payment of compensation to the creditor, which prevents the debtor's enrichment at the expense of the subcontractor. In addition, this proposal reduces the number of lawsuits, thus cutting the time and costs associated with pursuing claims. In conclusion, the author proposes that similar measures be introduced to Polish civil law in a broader scope for certain service contracts. He sets out conditions for the joint and several liability of the debtor and his subcontractor, indicating the need to strike a balance between the interests of the creditor, the debtor and the subcontractor.

Keywords: subcontracting; joint and several liability; redress.

INTRODUCTORY REMARKS

Service contracts are among contracts in which the use of other persons (subcontractors and auxiliaries) in their performance is very frequent. This applies in particular to contracts such as a specific work contract, a construction contract, a contract of mandate and a service contract, to which

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the provisions on mandate contract apply (Article 750 of the Civil Code[1]), a contract of carriage or a forwarding contract, in particular, in transactions between traders. This is the result of a deepening specialisation, as well as a significant differentiation of entrepreneurs of the same industry in economic and organisational terms. Entrepreneurs with greater economic potential have wider opportunities to attract customers. Their rates are higher and thus they can use the services of other, usually smaller and cheaper, entrepreneurs when performing their obligations. Other reasons for recourse to subcontractors' services are also at stake, such as restrictions on the availability of infrastructure (especially in the railway or aviation industry), as well as regulations on providing services in a specific territory.

Situations where the subcontractor or the auxiliary fails to perform his obligations or performs them defectively give rise to significant legal problems. The need to pursue claims for damages in the order resulting from the chain of contracts executed prolongs the settlement process. There are also doubts regarding the nature of claims (independent, repayable) due to the debtor responsible for non-performance or improper performance of the obligation against his subcontractor or auxiliary who is the perpetrator of this breach of the contract. Premises for such claims and the subject matter of their limitation are disputed.

Regulations of the issues referred to above are accommodated in special rules that refer to certain types of contracts. Examples of such regulations in Polish law include Article 738(2) CC (contract of mandate) and Article 840 CC (storage contract), where joint and several liability of the debtor and his subcontractors (substitutes) are provided, and thus – the possibility of direct redress by the creditor against this subcontractor.

A similar measure is also found in international (conventional) carriage law. Transport conventions also address the issue of mutual claims between carriers participating in a single transport operation.[2]

The question arises as to the advantages and possible risks of such a solution and whether it could be introduced into national legislation for other service contracts. It is also a question of defining the conditions that would have to be met to allow these measures in a wider extent.

The purpose of this study is to try to answer the above questions. It will be preceded by a more detailed presentation of those specific rules which

[1] Act of 24 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 as amended [hereinafter: CC].

[2] The construction of a contract in favour of a third party may be omitted here; in line with the prevailing view it is used in the context of a contract for the carriage of goods, where the situation of the recipient of the goods has been regulated alongside the situation of the parties to the contract. This qualification is most justified in [Goik 1975, 94-98]. See also Górski 1999, 114-16; Stec 2005, 77-78.

could constitute a model of regulation with a more general scope. The author is aware of the risk of transferring measures applied to selected types of contracts to a more general plane of contract law. Therefore, this study does not aspire to present a full solution to the problem, but should be treated as an introduction to a possible discussion, with an attempt to determine its directions.

In preparing the study, the method of investigation of the law in force. In particular, logico-linguistic methods in the form of formal-logical and linguistic analysis (comparison of legal regulations taking into account formal logic and legal methodology) and legal comparison were used, referring to the provisions of domestic law and international conventions containing uniform rules of private law. Views expressed in Polish and foreign literature are taken into account.

1. THE REGULATION OF SUBCONTRACTING IN POLISH CIVIL LAW

As a principle, the debtor may fulfil his obligation using other persons. The Act only provides for the obligation of personal delivery of the performance (Article 356(1) CC). However, the debtor is liable for the acts and omissions of the persons with whose help he performs the obligation (auxiliaries) or persons to whom he entrusts the performance of the obligation (subcontractors) as for his own actions or omissions (Article 474 CC). He therefore bears the risk of the improper acts of his subcontractors and auxiliaries [Radwański, Olejniczak, and Grykiel 2024, 357]. In assessing the debtor's liability, it is irrelevant whether the subcontractor, acted in accordance with his instructions or contrary to those instructions.[3] This principle is not limited to the acts and omissions of a subcontractor of his choice, but it also applies to any further subcontractors, even if the obligation to perform the service is beyond the will and knowledge of the debtor.[4]

[3] See judgment of the Court of Appeal in Katowice of 27 January 2021, ref. no. V AGa 254/19, https://orzeczenia.katowice.sa.gov.pl/content/$N/151500000002503_V_AGa_000254_2019_Uz_2021-01-27_003 [accessed: 05.05.2025].

[4] See Resolution of the Supreme Court of 25 February 1986, ref. no. III CZP 2/86, concerning liability of a travel agency for acts of foreign third parties which it uses in the performance of its obligations with commentary by K. Wesołowski [Wesołowski 1988]. In few scenarios only is a departure from the principle of the debtor's liability for the subcontractor allowed according to the "as for his own actions" formula in favour of the principle of alleged fault in the choice. An example of such an exceptional regulation is provided in Article 799 CC, concerning the liability of the freight forwarder for carriers (who, however, cannot be considered as subcontractors of the freight forwarder) and downstream freight forwarders [Idem 2007, 139-50]; Article 738(1) CC, concerning liability of the recipient of the order in the situation when the possibility of entrusting the carrying out of the substitute performance results from a contract, custom or when he is forced to do so, and at the same

The contractual relationship between the debtor and his subcontractor, unless formed as a contract for the benefit of a third party (*pactum in favorem tertii* – Article 393 CC),[5] does not give the creditor grounds for pursuing a claim for performance against the debtor's auxiliaries or subcontractors, nor for pursuing claims for damages arising from non-performance or improper delivery of the performance. This is a consequence of the relative nature of claims resulting from service contracts, which do, after all, involve an obligation by nature.

This means that claims arising from such contracts, as well as claims arising from other obligation-involving contracts, can only be pursued against the other party to the contract. The creditor may therefore address his demands only against the debtor, and the latter – against the subcontractor or the auxiliary.[6] This rule applies to further subcontracting or ancillary contracts.

An exception to this rule is provided in a few cases, for example for the substitute accepting the order and the keeper, regardless of whether the conditions for entrusting the making of the performance under these contracts are fulfilled or not (Article 738(2) CC; Article 840(2) CC). The provisions governing this issue also provide for joint and several liability of the person accepting the order and his substitute to the principal and the keeper and his substitute to the person placing the order for the performance of the service, but only if the contractor or keeper is liable for the acts of his substitute as for his own actions. The latter reservation is a consequence of a departure from the principle of liability for a substitute as for one's own actions, while complying with the requirements of the provisions of Article 738(1) CC and Article 840(1) CC.

The Civil Code does not regulate matters related to the pursuit of claims between the debtor and his subcontractor. The legislator must have believed that there are no special features of the obligation relationship between these persons. However, practise reveals doubts as to its validity in the case of claims for damages resulting from non-performance or improper performance of an obligation.

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time he immediately notifies the principal of the person and place of residence of his substitute. Article 840(1) CC stipulates for a similar arrangement for the keeper substitute. The departure from the principle of liability according to the "as for his own actions or omissions" formula is unique, dictated by the specific nature of the performance or the circumstances of its execution and cannot be a model for more general solutions.

[5] See Bednarek 2006, 901-905; Kubas 2020, 1188-190; Machnikowski 2023 (commentary on Article 393 CC, no. 7).

[6] Here I omit the situation of joinder of grounds for liability (Article 443 CC), in which the non-performance or improper performance of the contract by the subcontractor or the auxiliary is at the same time an unlawful act (e.g. theft of the parcel by the subcontractor carrier).

The very premise of damage is already disputed, namely whether the compensation of the damage caused to the creditor by the debtor is a necessary condition for effective pursuit of claims against the subcontractor, or whether the debt owed by the debtor towards his counterparty is already damage constituting a premise for the subcontractor's liability. This problem is resolved differently [Zagrobelny 2009, 571-81]. Some authors assume that the debt itself in the debtor's assets, which is a correlate to the creditor's claim for damages, regardless of the maturity of the claim, is tantamount to damage that enables claims to be made against the subcontractor [ibid., 575-76; Idem 2006, 283; Rudnicki 2007, 208].[7] The established line of judicial decisions presents a position that we may only talk about damage if the creditor's claim against the debtor is due.[8] The most far-reaching solution introduces a requirement for effective redress between the debtor and the subcontractor.[9]

There is no need to take a position in this discussion. It seems that the issue should be dealt with *in casu*. For example, in transport relations, the concept of damage is understood slightly differently, by reducing it to the loss, depletion or damage of the consignment (in isolation from the remaining property) [Ambrożuk 2011, 66-67], which leads to the view that the mere fact of the occurrence of such damage enables the contracting carrier to pursue claims against the operating carrier, regardless of whether he himself paid compensation to the sender or recipient of the shipment.[10] However, even in these relations, this issue is not uniformly resolved.[11]

The problem also concerns the initial run of the limitation period for claims of debtors against their subcontractors. There are generally no legal regulations introducing separate limitation periods in relations between the debtor and his subcontractor. This puts debtors in a difficult situation, especially when short limitation periods are foreseen, the course of which

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[7] Cf. also judgement of the Supreme Court of 1 February 2006, ref. no. V CSK 86/05, OSP 2007, No. 2, item 13.

[8] Resolution of the Supreme Court of 10 July 2008, ref. no. III CZP 62/08, MoP 2008, No. 16, 842.

[9] Judgement of the Supreme Court of 13 January 1962, ref. no. 2 CR 1116/60, OSPiKA 1963, No. 3, item 65; cf. also judgement of the Court of Appeals in Cracow of 6 March 1991, ref. no. I ACR 24/91, OSA 1991, No. 4, item 23.

[10] See the position of the Austrian Obersten Gerichtshof (Supreme Court) in the judgement of 20 June 2000, Transportrecht 2001, 79, in which the court explained that this line of Austrian jurisprudence has formed since the 1996 judgement of Obersten Gerichtshof (4 Ob. 2336/96z), in which the court, departing from the previously presented position, assumed that the damage in the relationship between the entitled person and the first carrier arises at the same time as the damage in the relationship between that carrier and his subcontractor. The court expressly stated that the first carrier can claim compensation regardless of whether he has repaired the damage himself. These rules apply to the relationship between further subcontractors.

[11] See Wesołowski 2020, 407, as well as positions taken in the following works: Górski and Żabski 1990, 274; Kolarski 2002, 144; Szanciło 2008, 384-85.

has been "detached" from the maturity of the claim (e.g. Article 646 CC concerning the contract for specific work[12]). Such regulations raise reasonable controversy in situations in which they have been introduced. The provisions on limitation periods for claims between carriers involved in carriage serve as an example here. The Civil Code contains a regulation concerning a specific limitation period for claims due to the carrier "against other carriers who participated in the carriage". This period shall be six months from the date on which the carrier repaired the damage or from the date on which the action is brought against it (Article 793 CC). Regulations corresponding to the provisions of Article 789(1) CC and Article 793 CC are also included in the Transport Law Act[13] (Article 5 and Article 75(1)). The 6-month time limit for bringing an action, if it runs from bringing an action against the first carrier – taking into account the time limits for hearing cases in courts – does not fulfil its role [Wesołowski 2006, 253-64].

2. CONVENTIONAL REGULATION

Special rules for the pursuit of claims for damages caused by subcontractors are contained in certain international conventions containing uniform private law provisions, in particular those governing the contract of carriage in individual modes of transport.[14] The carrier concluding the contract

[12] See Resolution of the Supreme Court of 15 October 2024, ref. no. III CZP 19/24, taken after considering the following legal issue: "should the limitation period for a claim for damages resulting from improper performance of a contract for a specific work under Article 471 CC begin pursuant to Article 646 CC, regardless of the time the damage occurred, or should the beginning of that period be determined in accordance with the rules laid down in Article 120 CC?" The SC held in this resolution that "the limitation period for a claim for compensation for damage resulting from improper performance of a specific work contract under Article 471 CC begins to run at the time specified in Article 646 CC."

[13] Act of 15 November 1984, the Transport Law, Journal of Laws of 2020, item 8 [hereinafter: Transport Law].

[14] The comments concern the conventions governing the contract of carriage of goods. The following conventions are meant here: Convention concerning International Carriage by Rial (COTIF) of 9 May 1980 (Journal of Laws of 1985, No. 34, item 158), as amended by the Vilnius Protocol of 3 June 1999 (Journal of Laws of 2007, No. 100, item 674), whereby the carriage of goods is stipulated in Appendix B – Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) [hereinafter: RU/CIM]; two aviation conventions: the Warsaw Convention – i.e. Convention for the Unification of certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (Journal of Laws of 1933, No. 8, item 49), as amended by the Hague Protocol of 28 September 1955 (Journal of Laws of 1963, No. 33, item 189), supplemented by the Convention, Supplementary to the Warsaw Convention, for the Unification of certain Rules relating to International Carriage by Air performed by a person other than the Contracting Carrier of 18 September 1961, also referred to as the Gudalajar Convention (Journal of Laws of 1965, No. 25, item 167) and the Montreal Convention – Convention for the Unification of certain Rules for

with the original consignor is sometimes referred to here as the contracting carrier and his subcontractor – the actual carrier.[15] The contracting carrier, who has the status of consignor vis-à-vis the operating carrier, is liable for the acts and omissions of his subcontractors as for his own actions (Article 27 1 RU/CIM; Article II of the Guadalajara Convention; Article 40 of the Montreal Convention; Article 3 CMR). This also applies to acts which in other circumstances could be treated not as an act in the performance of an obligation but as "incidental" acts while performing an obligation (e.g. misappropriation of the goods transported).[16] Some conventions also contain provisions introducing separate rules on the limitation of claims between the contracting carrier and the operating carrier (Article 24(4) CMNI[17]).

The most interesting measure, which currently exists in most international transport conventions,[18] is the joint and several liability of the contracting carrier and the operating carrier (subcontractor) for damage caused by the latter, and thus – the possibility of direct pursuit of claims by the entitled person (consignor or consignee, passenger) against the operating carrier. This provision first appeared in the Guadalajara Convention, complementing the Warsaw Convention. That Convention, which is the model for subsequent analogous regulations, provides that an action for compensation in respect of carriage performed by an operating carrier may be brought, at the choice of the claimant, against that carrier or against the contracting carrier or both, jointly or separately.

The Guadalajara Convention has articulated a number of related rules, the most important of which are: 1) the acts or omissions of the contracting

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International Carriage by Air of 28 May 1999 (Journal of Laws of 2007, No. 37, item 235); Convention on the Contract for the International Carriage of Goods by Road (CMR) of 19 May 1956 (Journal of Laws of 1962, No. 49, item 238 as amended). However, the possibility of pursuing claims directly against operating carriers presented in this study is also provided for in the provisions on the carriage of persons, including in EU regulations.

15 The terms contracting carrier and actual carrier are used in aviation conventions – the Guadalajara and Montreal Conventions. In RU/CIM uses the terms contractual carrier and substitute carriers (sub-contracting carrier). CMR does not use these terms.

16 Cf. judgement of the Court of Appeals in Warsaw of 21 February 2013, ref. no. VI ACa1095/12, http://orzeczenia.waw.sa.gov.pl/content/$N/154500000003003_VI_ACa_001095_2012_Uz_2013-02-21_001 [accessed: 18.03.2025].

17 Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) of 22 June 2001, which Poland has not ratified, hereinafter referred to as CMNI, also referred to as the Budapest Convention.

18 CMR does not provide for such a measure, which also explains the lack of provisions in this convention regulating the limitation period separately between the contracting carrier and the subcontractor – for more detail see Wesołowski 2013, 722-28. See also judgment of the Court of Appeal in Warsaw of 24 May 2019, ref. no. VII AGa 1232/18, https://orzeczenia.waw.sa.gov.pl/content/$N/154500000003527_VII_AGa_001232_2018_Uz_2019-05-24_002 [accessed: 05.05.2025].

carrier must not subject the operating carrier to actual liability beyond the limits provided for in the convention, and any special contract under which the contracting carrier accepts obligations not arising from the convention, nor any special declaration of interest in delivery (increasing the carrier's liability), may not have effects on the operating carrier unless he has given his consent; 2) any person acting as the operating carrier or the contracting carrier, if he proves that he has acted in the performance of his functions, may invoke the limitations of liability applicable to the carrier; 3) the total amount of compensation which may be obtained from the operating carrier and the contracting carrier, as well as from persons acting for them in the performance of their functions, shall not exceed the highest compensation which can be claimed either from the contracting carrier or from the operating carrier; 4) an action for damages should be brought at the choice of the claimant either before one of the courts with which the action against the contracting carrier may be brought or before the court of the place of residence of the operating carrier or of the place of his principal place of business.

Similar solutions were adopted in the Montreal Convention (Articles 39 to 48), in part also in the amended Railway Convention (Article 27 RU/CIM) and in the Convention on Inland Navigation (see Article 4(5) CMNI). It is also adopted by some internal law systems (para. 437 HGB (*Handelsgesetzbuch* – German Commercial Code).[19] However, the accepted design of the liability of both carriers sometimes suffers from certain deviations from the model solutions. It follows from Article 45(7) RU/CIM that if the entitled person has a choice between one or more carriers and a subcontractor carrier, his right of choice expires when an action is brought against one of those carriers.

3. BENEFITS AND RISKS RESULTING FROM THE POSSIBILITY OF DIRECT REDRESS AGAINST SUBCONTRACTORS

The advantages of introducing joint and several liability of the contracting carrier and the operating carrier (subcontractor) for damages caused by the latter, and thus – the possibility of directly pursuing claims for damages against the subcontractor, are unquestionable, both for the creditor and the contracting carrier himself. In the case of the former, this proposal reduces the risk of not obtaining compensation as a result of the debtor's insolvency and also allows redress before the court competent for the subcontractor.

[19] The direct liability of the subcontractor is also known to some public law regulation. See judgment of the Court of Justice of the European Union of 21 December 2016, ref. no. C-547/15, ZOTSiS 2016/12/I-983.

With regard to the contracting carrier himself, the measure adopted in many cases will allow the settlement of the damage without his participation. It also clarifies his legal situation towards the subcontractor. The reference to the formula of joint and several liability also results in the fact that the dispute about the nature of the claim between the contracting carrier and his subcontractor becomes obsolete. Where the debtor and the subcontractor are jointly and severally liable to the creditor, this is undoubtedly a recourse claim.

This, in turn, guarantees the subcontractor that two different entities cannot effectively pursue the same claims. A claim by the debtor against the subcontractor will arise only after payment of compensation to the creditor (the person entitled according to carriage law terminology). This prevents the debtor's enrichment at the expense of the subcontractor, which often happens when the debtor enforces the claim for damages due to him against the subcontractor but does not repair the damage caused to the creditor for one or other reasons (e.g. as a result of effective raising of the claim of limitation).

The proposal also has a more general value. It shortens the path of pursuing claims for damages in order to finally repair the damage, reduces the number of lawsuits, and thus the time and costs associated with it.

At the same time, it is difficult to see any deterioration of the situation of the subcontractor himself in the measure discussed. Although there is a breach of the principle that the contract only produces *inter partes* effects, this does not pose a risk of breaching the trading security principle. Fundamentally, subcontractors should not be concerned about to whom they are liable for making the performance or the consequences of non-performance (improper performance). One can see here a certain analogy to a transfer of a claim, which in principle does not require the debtor's consent, precisely because it does change anything in his situation. A certain disadvantage for the subcontractor could come a fact that in the event of an action against the debtor and the subcontractor, the proceedings could take place in the court competent for the defendant debtor (Article 43(1) CCP[20]). This issue should not be prejudicial in the total of advantages and disadvantages of the proposal.

The regulation of specific limitation periods for claims between these carriers also deserves credit, although there may be reservations about specific solutions concerning this.[21]

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[20] Act of 17 November 1960, the Code of Civil Procedure, Journal of Laws of 2024, item 1568 as amended.

[21] More detail in Wesołowski 2006, 253-64; Idem 2020, 408-10.

4. *DE LEGE FERENDA* CONCLUSIONS

As may be seen from the above comments, the overall assessment of a proposal consisting in the introduction of joint and several liability of the contracting carrier and the operating carrier, and thus the creditor's possibility to pursue claims directly from the operating carrier, deserves praise. It is perhaps not without significance that this proposal has been shaped over many decades of application of conventions, and not as a response to the immediate need for economic practise. It begins to displace another traditional construction of this law, which is successive transport [Glass 2003, 72-95; Lamont-Black 2017, 8-21].

One may wonder here about the meaning and possibility of applying a similar measure in other contractual relationships. Such measures in Polish law refer only to contracts where there is an element of special trust. It cannot even be found in regulations governing the contract of carriage, although these are largely modelled on conventional solutions. However, it does not seem that the reason for the special trust, as well as the resulting order (in principle) to make the performance personally, could be decisive.

The proposal offered here should not be hindered by the fear of violating the construction of the obligation as a relationship from which only relative rights arise. The Polish legislator decided to extend the effectiveness of receivables not only in situations regulated in Article 738(2) and Article 840 CC, but also in the measure adopted in Article 647^1 CC. It concerns joint and several liability of the investor and the contractor of construction works towards the subcontractor for the remuneration of the latter, and thus a situation much more controversial from the point of view of the principle of security of trading (the risk of double payment of remuneration for works performed by the subcontractor, resulting from the investor's inability to invoke in a dispute with the subcontractor the allegation of performance of an obligation towards the contractor).[22]

In the context of Article 647^1 CC, it seems incomprehensible that an investor who is jointly and severally liable with the contractor for the remuneration of a subcontractor of construction works should not able to pursue claims against the latter. The introduction of such a measure would in a sense compensate the investor's situation in relation to the subcontractor. This would give him, for example, the possibility of setting off mutual claims (for the subcontractor's remuneration and compensation due to the investor or for reducing the price under warranty provisions).

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[22] See judgment of the Supreme Court of 11 January 2008, ref. no. V CSK 179/07, OSNZD 2008, No. 4, item 100. Other questionable regulatory issues are highlighted in Rzewuska 2017, 101-10; Strzępka 2017, 1485-486; Szostak 2008, 17; Klich 2010, 330; Zagrobelny 2013, 254-55.

In the case of other contracts in which there is no problem of the creditor's liability for the remuneration of the subcontractor of that provision, the proposed measure also seems entirely justified. It is therefore necessary that the conditions for its "extension" to other contracting relations be formulated. The aim is for the implementation of the basic objective of this measure, which is to facilitate redress and the settlement of damages, to not cause deterioration of the situation of the subcontractor, both in terms of substantive law and procedural aspects.

First, as was the premise of this study, the assumption of joint and several liability of the debtor and his subcontractor for damage caused by the latter's non-performance or improper performance of the obligation is possible only in the case of certain types of service contracts. Therefore, it is not an option for other groups of contracts (e.g. transfer of ownership, credit, guarantee, use of someone else's property). Moreover, this proposal also does not seem to be feasible for certain service contracts (e.g. a commission contract).

Secondly, joint and several liability with the debtor may only cover subcontractors of all or part of the performance, but not other persons (auxiliaries).

Thirdly, the measure in question should refer to situations in which the debtor bears liability for the subcontractor "as for his own actions" (cf. Article 738(2) CC). However, it would not apply to cases where the debtor were liable for the acts of a subcontractor on the basis of fault of choice, even if the fault is presumed (Article 799 CC).

Finally, the extent of the subcontractor's liability to the creditor must be delineated both by the subcontractor's own liability and by the debtor's liability to the creditor. This applies to both the principle of liability and the amount of compensation. This issue is important as different rules may apply to the issue of the debtor's liability to the creditor and the subcontractor's liability to the debtor (e.g. to the debtor, an international transport convention providing for a limitation of damages; and to the subcontractor of a national transport section, national rules not providing for such a limitation). In addition, contractual liability is generally governed by relatively binding contractual provisions, which means that the limits of liability of the debtor and his subcontractors may be different, even under the same provisions.

The limited framework of this article does not allow for a more detailed discussion of these conditions. Naturally, the matter of which specific types of contracts the proposed measure could be applied to requires closer examination. The problem of regulating the limitation period separately (the beginning of the limitation period, its length) in relation to recourse claims between the debtor and his subcontractor is also left for consideration. Provisions of international transport conventions could serve as a model here.

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