



Emerging Markets:

A Review of Business and Legal Issues

VOLUME 2 | No 3 | November 2010

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- ❖ The contribution of the nobility from Lublin to the work of the state's reform in the early days of the activity of the Great Sejm *by Waldemar Bednaruk*
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Emerging Markets: A Review of Business and Legal Issues

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Publisher:

Emerging Markets Review

ul. Wachowiaka 28/8, 81-418 Gdynia, POLAND



Cover design & Photo: Tomasz Gulla

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AUTHOR: dr Waldemar Bednaruk

“The contribution of the nobility from Lublin to the work of the state’s reform in the early days of the activity of the Great Sejm”

The period of the reign of the last Polish king Stanisław August Poniatowski was when the thought of the necessity of radical changes grew in the minds of the nobility. The previous sejm (parliament) underwent degeneration in the course of the former hundred years and that gave rise to numerous pathologies, resulting in considerable weakening of the once powerful state. The election system of appointing the king which allowed the nobility to decide upon the most appropriate candidate now led to destructive wars. Instead of the nobility and their support it was the foreign courts which arbitrarily settled behind the backs of the electors who was to rule in our country and which had the decisive voice in the victory of a given candidate. The principle of unanimity in passing resolutions of the sejm and sejmik (small parliament), which forced the gentry to seek a – frequently difficult – compromise for the sake of the whole country in the course of time changed into the right to immediately end the current sessions by a single person through *liberum veto*. In such a case, personal ambitions and animosities replaced the assumed cooperation, which gave way to paralyzing the most important organ. Foreign countries as well as magnates who were against any changes did not fail to take advantage of that situation. Without an efficiently functioning parliament and with limited competences of the king, it was impossible to reform the inefficient tax system or reconstruct the small and poorly-equipped army. Changes had to be introduced in the archaic law and corrupted and inefficient law courts.

A part of the nobility with conservative views held the opinion that the country could be cured by returning to the roots, good example and strict observance of the binding law. It was argued that if in the past this system worked effectively and made Poland a land flowing with milk and honey and a power playing the foremost role in the world’s politics, then it was enough to keep to the old rules and then the times of abundance and splendour would come back.

Conservatives also feared the loss of numerous privileges of the nobility class which – during the political transformation – could suffer a loss. Therefore, they preferred to avoid any deep transformation of the existing political system.¹

A different opinion was held by the camp of advocates of changes who were concentrated around the pro-reformist group called “Familia” headed by the powerful Czartoryski family. The reformers postulated a deep restructuring of the existing system of rule. They maintained that further support of the old political solutions could lead to a disaster, which was signalled by the First Partition of Poland executed by Russia, Austria and Prussia in 1772.

The king, who together with his supporters centred around the royal camp, saw the numerous worries vexing his subjects. However, the king – cautious by his nature – did not want to undertake any steps without the consent of his protector – the ruler of Russia. The latter did not agree for the reforms that could strengthen the Polish state and as a consequence lead to its independence from Russia. It was the more or less diplomatic behaviour of Catherine II of Russia that made it impossible to conduct the necessary changes for a number of years to a greater extent than the resistance of the domestic conservatives.²

In the middle of the 1780's the approaching conflict between Russia and Turkey and the cooling in the relations between our neighbours seemed to favour realization of the aims planned for long. In May of 1787 Stanisław August met the ruler of Russia and offered her aid in the imminent war with Turkey in return for her consent for certain necessary political reforms. However, Catherine rejected his offer and did not agree for any changes in Poland. Three months later the Russian-Turkish war broke out; however, despite the renewed offers from the Polish king, the empress remained stiff-necked and consistently refused her permission for any reforms.

In the spring of 1788 the king issued a Universal calling the nobility to take part in the small parliament where they should appoint the deputies to the General Sejm. In his Universal,

¹ Cf. W. Rzewuski, *Myśli o teraźniejszych okolicznościach Rzeczypospolitej*. Poczajów 1756, p. D2.

² For a number of years, Russian troops were deployed in the area of Poland, constituting a strong element of pressure on the king and the nobility. They did not leave Poland until 1780. On the other hand, Russian diplomats controlled the activities of Stanisław August, informing their ruler on any attempts to make independent decisions in important matters of interior and foreign policies and nipped too daring initiatives in the bud, cf. *Wielka historia Polski*, ed. by M. Szulc, Kraków 1998, Vol. V, p. 129.

the monarch assured his subjects that his will to do good and to reform the state was permanent and unchanged and that was why he encouraged them to elect true patriots having regard for homeland's welfare and its urgent needs. He drew attention to the country's difficult situation and the need to accomplish the necessary changes.¹ In reality, however, he feared taking any bold steps without the consent of Catherine the Great, still hoping at this stage that she would make concessions. In the meantime, he made efforts to secure as great a number of deputies as possible who were his supporters. He sent his emissaries to particular voivodships and lands so that they could prepare a campaign for the candidates that were faithful to the king. He wrote letters to his adherents, encouraging them to actively join in the election campaign and he persuaded those indecisive to declare themselves on the side of the royal court.

Meanwhile, a unique opportunity to make radical political changes were noticed by the leaders of the reformist camp. The fact that no Russian troops were deployed in Poland while Empress Catherine the Great was wholly concentrated on the conflict with Turkey, together with the signals that came from Prussia to support the reforms in our country gave hopes for a breakthrough in this matter. For decades, the atmosphere had not been so favourable on the international arena for Poland's independent decisions about its own fate. The situation was to be taken advantage of. "Familia" camp had already started preparations for the elections months before the fixed date when the small parliaments were to commence their work. Candidate lists were compiled, means were collected and projects of future reforms were written.

The Lublin voivodship had the right to send 3 deputies to the Sejm. Duke Adam Czartoryski himself – head of the reformist camp – was going to stand for election. The king – being aware of those plans – informed his supporters that he did not intend to oppose the former candidacy or prevent his election; however, he counted on enforcing at least a part of his followers in that area. Despite that, in the face of a carefully planned campaign, the opponents of "Familia" appeared to be helpless – the Lublin small parliament commenced its session on 18 August, 1788, and its course was fully controlled by the leaders of the reformist camp. The

¹ King Stanisław August's Universal from 22 May, 1788, a manuscript of the Polish Academy of Sciences library in Kraków, catalogue number 8326, p. 455,

Czartoryski family, having in mind the failure that they had suffered during the small parliaments two years before, safeguarded themselves against another one bringing a few thousand of their supporters from the poor nobility who – considering their numbers – were supposed to deter their opponents.¹ That was, however, unnecessary caution since – as claimed by the witnesses of those events – neither the royal camp nor conservatives prepared properly for the small parliaments, and the great majority of the nobility were convinced about the necessity of making reforms, hence “Familia” and its program enjoyed the voters’ support.² As a result of a carefully prepared and conducted election campaign, all seats in the elections to the Sejm were taken by people enjoying the support of the Czartosyski family, including Duke Adam himself.

The defeat of the royal camp was absolute, but both the king and the conservatives were truly concerned not so much about the defeat of the candidates from those groups as the instructions passed by the Lublin nobility and transferred to the deputies to be realized in the Sejm.³ They contained a number of progressive postulates, largely incorporated in life by the Sejm thanks to the reformers’ support. The most important matter given to the Lublin deputies to realize was the issue of the State’s security. Anxiety arose in connection with the fact of Poland’s complete helplessness towards the neighbours who possessed strong armies.⁴ That is why a postulate was put forward to increase the number from 18,000 to 40,000 soldiers. Besides, it was recommended that in each piece of land – according to its possibilities – the Sejm should have troops of horse and infantry militia formed, which in times of peace would secure law and order

¹ It was a specific paradox that the Czartoryski family, who advocated taking away the votes from the poor nobility who did not have any land properties, had to take advantage of the help of this groups of voters in order to support their program. J. Kermisz, *Lublin i lubelskie w ostatnich latach Rzeczypospolitej (1788 – 1794)*, Lublin 1939, p. 8.

² K. Koźmian, *Pamiętniki*, Poznań 1858, pp. 129 ff.

³ The king expressed his concern in the letters written to Antoni Deboli, a royal representative staying at the Petersburg court, cf. A letter written by Stanisław August Poniatowski on the instructions of the Lublin small parliament from 10 September, 1788. a manuscript AGAD, A Collection of the Popiel Family, catalogue number 417, p. 556

⁴ Since 1717 Poland could be called a demilitarized country because it was then that the Sejm – under Russia’s pressure – decreed the number of posts for the army at the level of 24,200. In practice, even this modest figure was not reached, and the numbers were kept at the level below 20,000 until 1788. All attempts to increase the Polish military forces met with a strong reaction from our neighbours, who forced the successive rulers to give up their too ambitious plans. At that time, the Prussian army had 186,000 soldiers, while the Austrian and Russian armies had 200,000 each, which was only in the state of peace because in case of war the numbers were considerably increased, cf. E. Rostworowski, *Historia powszechna wiek XVIII*, Warszawa 1995, p. 98.

in their area, and in case of war would be commanded by the army and would reinforce the military potential of the country. A lot of attention was given in the instructions to the sources which could be used to cover the expenses on the army. The Lublin nobility suggested that all budget reserves should be used to this aim, that the clergy should be taxed, the number of officials should be decreased and an inspection should be made of the incomes from the royal properties so that unused means would be detected and transferred to the army.¹

Economical reasons but also the nation's honour as well as the necessity to maintain security were used in those instructions to explain the demand to do away with the Permanent Council – a collective administrative organ, which was a substitute of the government with limited prerogatives of the executive power. Created under Russia's pressure in 1775, the Council was supposed to support the king in ruling the state, but also control him and limit his reformist tendencies. Since the very beginning, it was reluctantly treated by the Polish patriots who considered it a symbol of the dependence on the Petersburg court. That was the reason why its abolishment was to be an expression of rejecting the Russian guardianship and regaining full sovereignty.²

The Lublin gentry also recommended that the Sejm should not waste time and energy on dealing with private matters of individual people who only occupied the time and caused quarrels, which made the agreement difficult later on in the most important issues and which had already taken place in earlier terms of office. It was recommended that the Lublin deputies should try to enforce changing the system of the work of the Sejm, which before had worked continuously for 6 weeks and then – in case its term was not extended – it was dissolved and the deputies could go home. Now – according to the recommendations of the Lublin nobility – the term of office should last two full years, and the dates of sittings were supposed to be settled by the king as the need arose so that the favourable situation, meaning conflicts between the

¹ Instrukcja JW. Posłom Województwa Lubelskiego na Sejm Walny Warszawski obranym dnia 18 VIII 1788 Roku, a manuscript of the Polish Academy of Sciences library in Krakowie, catalogue number 8326, pp. 461 ff.

² J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia państwa i prawa polskiego*, Warszawa 1985, p. 272.

neighbours, should be taken full advantage of. The times when the Sejm should hold its sessions were also suggested so that as little time as possible could be wasted.¹

A complex political program included in the Lublin instructions made an enormous impression throughout the whole country. Some points were included in the instructions of small parliaments of other voivodships, whereas the others were commented upon in favourable terms, accepting the necessity to carry them out. Initially, both conservatives and royal supporters, who feared Russia's reaction to such bold actions, were sceptical about the points comprised in the program. However, when the Prussian court assured their support for the planned reforms and the Russian diplomacy did not take any decisive steps to prevent their realization, the activities aimed at curing the Polish political system were accelerated.

The Sejm which began its debates on 6 October, 1788, was called Great due to the weight of the reforms undertaken, and Four-Years' – due to the time it continued. It debated bound by the confederation, which meant that the acts were passed by the majority of votes excluding the possibility of applying *liberum veto*. It was assumed that the Sejm's session was to last six weeks; however, following the postulate of the Lublin nobility its work was extended until all necessary changes were voted, which in practice meant as long as four years (until 29 May, 1792). It was possible thanks to the well-disposed attitudes inside the country and – as a consequence – the favourable international situation. It was already in the first months of the Sejm's activity that all the most important postulates included in the instructions of the Lublin gentry were passed. A thorough reform of the tax system was made, the number of soldiers in the army was increased to 100,000, the Permanent Council was abolished and work on the Constitution which was expected to introduce a new political system adapted to the needs of the modern state was begun. Representatives of the Lublin voivodship, who belonged to the most active deputies of that Sejm, had their contribution in those efforts.

If realization of the above-mentioned postulates did not give rise to any greater opposition on the part of the nobility throughout the country, the planned radical transformation

¹ Cf. Instrukcja ..., p. 463.

of the political system was not so universally accepted. It was feared that without limiting the numerous privileges of the nobility it would not be possible to do away with all the pathologies pestering the inefficient political system of the Polish Republic. And the majority of the nobility did not give their consent to such a sacrifice. That is why after deciding upon the necessary changes, a many-months' standstill took place in the work of the Sejm when the deputies belonging to the three main groups torpedoed their ideas. Successive months passed, and a compromise was still very distant.

On 8 February, 1790 the Lublin nobility gathered in the small parliament to elect the members of the civil-military committee decided to encourage the deputies to intensify their efforts for the sake of the reform. After the election was completed, a note of thanks was prepared for the Sejm for all the achievements so far, at the same time assuring that the Lublin voivodship – like the whole country – felt the advantages from the reforms adopted by the parliament. At the same time, appeals were made to hasten the work and finish it before the end of the two-years' term of the Sejm finished and before the new deputies replaced the old ones. In case not all the plans related to the political reform were successfully completed before the term of office finished, the deputies were authorized to undertake efforts to extend the debates of the Sejm until the expected political changes were finally achieved and declared.¹

Seeing the futility of their efforts, which could not be completed because of a too small number of deputies belonging to their camp, leaders of the reformist camp (at that time called patriotic) made endeavours in the summer of 1790 the aim of which was to win Stanisław August Poniatowski for their plans. Efforts to establish cooperation and to work out a common project of the planned Constitution lasted for a few months. At the end of the year certain settlements were made which gave the basis for further work; however, without the support of wider circles of the nobility a success of the planned reforms was impossible to achieve. Hence, on 28 September, 1790 the king issued a Universal calling the nobility to hold small parliaments on 16 November with the aim of electing deputies for the new term of the Parliament. At the

¹ Laudum of the Lublin small parliament from 1790, a manuscript from PAN library in Kraków, catalogue number 8326, pp. 475 ff.

same time, the Sejm marshals – in agreement with the monarch – issued notes to the nobility gathered at the small parliaments asking about the key changes of the political system. The first one submitted under consideration the problem of the possible election of the king's successor during the present ruler's lifetime in this way avoiding the danger of interregnum after his death.¹ The second one informed on the achievements of the Sejm which was closing its term as well the undertakings that were begun but not finished and that required further work. Therefore, the marshals requested a permission to extend the present deputies' terms of office so that they – together with the newly elected ones – could continue their efforts to complete the reforms of the political system of the Republic of Poland. The third note recommended a candidate for the successor of the then ruling king – that was to be the elector Frederick August of Saxony.²

The notes from the Sejm marshals stirred up a storm throughout the country.³ The conservative camp which opposed too bold plans of reforming the political system of the state decided to take advantage of the approaching small parliaments to stifle those revolutionary ideas. All endeavours were concentrated to show the dangers of abandoning the principle of the nobility electing the king by way of free election after the king's death. It was argued that the consent to choose the successor during the lifetime of the ruling king had to lead to the principle of throne inheritance, which would in turn result in limiting the rights of the nobility. Leaders of the conservative camp Seweryn Rzewulski and Szczesny Potocki, in their letter of protest sent to the nobility in the whole country, persuaded that the idea of introducing an inherited throne would be the next yoke enforced upon the nation by the king. They warned that they witnessed the violence upon the golden liberties, and the rights and privileges won by the ancestors were

¹ A Universal issued by the Sejm marshals, Stanisław Małachowski and Kazimierz Nestor Sapieha from 24 September, 1790 concerning the question asked by the citizens to give consent to appoint the successor during the King's lifetime, a contemporary print in the collection of the library of John Paul II Catholic University of Lublin, catalogue number 70 (1), p. 185.

² Laudum of the Lublin small parliament from 16 November, 1790, a manuscript from PAN library in Kraków, catalogue number 8326, p. 480.

³ All attempts so far to carry out the election during the lifetime of the ruling king met strong resistance on the part of the nobility for whom free election after the king's death was considered to be one of their most important rights and they did not agree for any exceptions let alone the principle of throne inheritance which would take the right to decide about the person of the ruler away from the nobility, cf. I. Lewandowska – Malec, *Sejm Walny Koronny Rzeczypospolitej Obojga Narodów i jego dorobek ustawodawczy (1587-1632)*, Kraków 2009, p. 64.

lost. He, then, who agreed to introduce those changes wished to submit the whole nation to slavery. They predicted that those reforms would lead to numerous disasters, depravation of the youth with immorality and excess, followed by the decline in virtue and freedom because the inherited rulers would spoil everybody to divert their attention from liberties. Next, they would incite peasants against the nobility, the result being the yoke put over the necks of both groups and large but unnecessary taxes. Then, the hereditary kings would spread discord among the most important people in the country so that they could reign more easily and, finally, they would bring foreign armies to use them against the liberties of their subjects.¹

More letters of similar content appeared in that hot year and all of them were aimed at discouraging the gentry from too rash trust in the intentions of the king and the leaders of the patriotic camp.² The latter also did not lay down their arms and they conducted a large-scale information campaign, persuading the voters of the necessity of carrying out political transformations just then when the circumstances seemed to favour the reforms. The king's envoys went around the country and urged to vote for the candidate with pro-reformist views, even the king himself wrote letters to the leaders of local communities, encouraging them to express their support for their program. In one word, everybody was preparing for the decisive battle for the future of the state and the nation.

The patriotic camp, cooperating more and more closely with the royal camp, had grounds to believe that they would be able to bring them round to their program and obtain consent to conduct the planned changes. Despite the exceptional activity on the part of the conservatives, the voters' moods were favourable towards the reformers, and combining forces with the increasingly popular (because he was not so pro-Russian) king gave hopes for the positive outcome of the elections. Names of candidates in particular voivodships were established and a familiar person was delegated to each small parliament who was expected to keep watch over the

¹ Protestacja przeciw sukcesyi tronu w Polsce JWW. Seweryna Rzewuskiego Hetmana Polnego Koronnego y Stanisława Szczęsnego Potockiego Generała Artyleryi Koronney, Posła z prześwieznego Województwa Braclawskiego z dnia 25 września 1790 Roku. Wypis z Xiąg Ziemskich Województwa Braclawskiego, contemporary print in the collection of the library of John Paul II Catholic University of Lublin, catalogue number 70(1), p. 245.

² Cf. A. W. Rzewuski, O formie rządu republikańskiego myśli, Warszawa 1790, Vol. T. II, pp. 142 ff.

proper procedure of the debates and, at the same time, who was supposed to urge the nobility to vote for the proper candidates. Duke Adam Czartoryski himself went to Lublin with the king's consent, and as he reported to the king, he was optimistic about the results of that parliament on the basis of observation he made of the moods of the nobility on the spot. However, not everything went according to plan – the Lublin small parliament proved to be stormy, and opponents to the political changes appeared to be stronger than it had been expected. For four successive days, the conservatives fought fiercely for the shape of the parliamentary act and the names of candidates to the Sejm. Finally, a compromise was worked out which was called by a part of the descendants a defeat of the patriotic camp.¹

As a result of that agreement, the instructions passed by the Lublin nobility for the deputies in the approaching term of the Sejm included the consent to choose the successor to the throne during the lifetime of the ruling king, with a stipulation, however, that they did not agree for the throne inheritance. The elector of Saxony was accepted as the candidate for the throne on condition, however, that before taking over the throne he had to make an oath in which he would assure his future subject that he would not attempt to appoint a successor during his lifetime. Under the pressure of the conservative gentry it was ordered that the Lublin deputies should prevent passing the principle of throne inheritance. Therefore, it can be seen that – at least in relation to a part of the Lublin nobility – the catastrophic visions of the future of Poland ruled by hereditary monarch were effective. As far as other political changes are concerned, consent was given to finish them on condition that they could not in any way infringe the liberties and prerogatives of the nobility. It was ordered that estates so far owned by Polish kings and called crown lands were to be sold, in this way strengthening the State's Treasury. Efforts were to be made to increase budgetary incomes so that it would suffice to pay all the urgent expenses, especially the maintenance of a 100,000 army. Consent was given to improve the situation of townspeople and allow them certain rights and privileges; however, without equalizing them

¹ Cf. J.Kermisz, *Lublin ...*, p. 64, who stated that „... as a result of the battle between the zealots of golden liberty and the reformist camp, the conservative camp won a victory.”

with the prerogatives of the nobility. As for the peasants, it was demanded that they remain in the same relation of dependence on the nobility as before.¹

A similar compromise closed the election of six deputies of the Lublin voivodship – three were members of the conservative camp, and three others belonged to the patriotic camp. In a letter to the king, Duke Adam Czartoryski expressed moderate optimism in relation to the Lublin small parliament that had just closed and he wrote that the election of the deputies should be regarded as good and the instructions could have been worse. However, considering the consequences of that choice it is hard to agree with the Duke's opinion. One of the Lublin deputies was a conservative chamberlain, Tomasz Dłuski, who enjoyed respect and high popularity among the gentry. He was a declared opponent of most of the changes suggested by the patriotic camp and after he was elected to the Sejm he made a considerable contribution to the fight against reformists.²

Effects of the work of the other small parliaments were similar to those in Lublin – some instructions contained moderate support for the proposed changes, others opposed them more or less decisively.³ The nobility of certain voivodships consented to the reforms but they introduced so many stipulations and reservations in their instructions that the fulfilment of them all questioned the sense of any political changes.⁴ The fact, on the other hand, that the numbers of the patriotic camp increased considerably following the Sejm elections can be considered as its success.

Despite the lack of unequivocal consent on the part of the nobility to introduce a bold project of political changes, the patriotic camp – in agreement with the king – prepared and enforced the Constitution on Third of May, 1792, which was the first principal act in the

¹ Instrukcja Województwa Lubelskiego posłom na Sejm Extraordynaryjny Warszawski roku teraźniejszego 1790 w dniu 16 listopada rozpoczęta, 17 tego miesiąca złożona, w 18 dniu znacznie udecydowana, a w dniu 19 tegoż miesiąca zupełnie skończona, a manuscript of the library of the Polish Academy of Sciences in Kraków, catalogue number 8326, pp. 485 ff.

² Despite the elderly age, Dłuski was one of the most active deputies to the Great Sejm and with his speeches he impeded the process of the creation of the Constitution. After the latter was resolved, he was first among those who fought to abolish it, cf. J. Kermisz, *Lublin ...*, p. 65

³ Cf. C. Nanke, *Szlachta wołyńska wobec Konstytucji 3-go maja*, *Archiwum Naukowe*, Vol. III, Lwów 1907, pp. 481 ff.

⁴ A. Lityński, *Sejmiki ziemskie 1764 – 1793. Dzieje reformy*, Katowice 1988, p. 86.

European continent, and the second in the world. The Third of May Constitution, the preparation and resolution of which was largely aided by representatives of the Lublin voivodship, abolished *liberum veto*, did away with free election, replacing it with throne inheritance, and introduced a number of modern political solutions, at the same time not infringing – according to the demand of the Lublin nobility – any of the prerogatives of that class.

AUTHOR: dr Ewa Pierzchała

“Making authentication by public authorities”

1. Introductory remarks

In science, the study of the institution of administrative law is not a separate category of activities in the field of public administration. This includes most of the actual steps which apart from legal actions are generally two basic forms of public administration. The study of factual issues of the administration is the subject of many sciences including economics, organization and management. There is, however, in the literature mentioned above no comprehensive analysis on this issue. The reason is, perhaps, the marginal significance of this institution in administrative law. However, not marginalization, but the lack of uniform regulation in this area gives rise to a reluctance to carry out the analysis of this institution. A significant part of the doctrine of *de facto* devoted to activities that substantially helps to understand and use the institution of the study¹. Actual operations are not intended to create or eliminate legal relationships. According to M. Zimmermann actual steps of administration is “all those activities that are not directed to call directly to specific legal consequences”²

Authentication as a physical act, is an institution primarily procedural administrative law. Does not include any substance. It is an act of a technical nature, the legal relationship does not develop, or even it does not make it. Substantive nature of the study will be focused only on the scope (content) of the concept. Any process for the institution also has its background material. It is often, however, purely theoretical, allowing a certain extent to build a definition of the concept. The term “authentication” means the most material-technical activity involving the confirmation of the credibility of the document or actions performed by an appropriate clause legalization. It is often used alongside or instead of the term “authentication”. Polish language

¹ See for example.

² M. Zimmermann, *Forms of government. Administrative act*, (in:) W. Brzeziński, M. Jaroszyński, M. Zimmermann, *Polish administrative law, general part*, Warsaw 1956, p. 320.

Dictionary defines the term “authentication” as a declaration of truth or credibility of someone or something¹. There is no statutory definition of that term. The statement of administrative law in science is usually considered in the category of activities of public administrations. The, however, has a broader context. The provisions of administrative law provides the possibility to assign authentications even entities who are not authorities. As an institution of substantive law is free from administrative powers, understood as “the right to use lethal force by the administrative authorities shall carry out its unilateral orders (decisions)”². It is not based on administrative recognition, which is usually understood as a choice between different solutions in case of necessity of implementation legal status by the administration.³ Lack of administrative powers and discretion will secure use of authentication by the entities that are not public administration. Since both the power and recognition are the attributes of the administrative bodies. Thus, both employees of offices in the administrative procedure and beyond, within the limits of their tasks may make the authentication of the document and activities. Established practice is to make declarations by officials in his own name for internal purposes. However, to make such operations with effect from the third party is required to authorize the Authority. This practice has its reference in the law. They allow the authentication of documents by the staff of the office under the administrative procedure.⁴

Institution authenticating has a very diverse and widely used in proceedings before the organs of public administration. Its importance, both theoretical and practical training is very important. The nature of transactions involving the authentication of is similar to the certification and delivery. The main difference between an authentication and endorsement will be based on the fact that the authentication is a confirmation of facts or legal status, resulting from the conducted by the authority records, registers or other data in his possession⁵.

¹ Polish Language Dictionary.

² E. Ochendowski, *Administrative Law. General Part*, Toruń 2004, p. 25.

³ See *ibid*, p.190 et seq. And eg. M. Mincer, administrative recognition, Toruń 1983, p. 64 et seq.

⁴ See eg. § 23 of the Minister of National Education of 28 May 2010, on certificates, diplomas and other school related documents, (OJ No. 97, item. 624), § 34 Decree of the Prime Minister dated 22 March 2010, on the rules of conduct when dealing with appeals (OJ No. 48, pos. 280).

⁵ See article 218§ 1 C.A.P.

However, authentication is a confirmation of the facts that are not necessarily held by the authority, as may also be in the possession of parties who seek to make such authentication (ie. Authentication of compliance with the original copy).

2. Legal regulation of authentication

Legal regulations concerning the authentication is not homogeneous and highly distributed. The basic legal act in our legal system governing rules, procedure and form of authentication is the law of 14 February 1991 – Law on Notary Public ¹. The provisions of this Act shall exchange authentication among the notary acts performed by a notary. The rule governed by the Article 96 u.p.n. is authentication by a notary personal signature, compliance excerpt, extract or copy of ID shown, the authentication date of production of the document or certificate to remain in a person's life or a specified location. The exception to this rule is article 101 u.p.n. giving the delegation the Minister of Justice to issue a regulation authorizing the local government bodies and banks based in localities where there is a notary, to draw up some s, made by a notary. On the basis of article 101 u.p.n. Minister of Justice issued a decree dated 7 February 2007 on the compilation of some of the authentication of the local government authorities and banks². This act although it is just a regulation, is one of the most important legal basis to make declarations by public authorities. Another act containing legal regulation to make the authentication of an administrative authority is the law of 11 April 2003 on agricultural systems³.

¹ J.t. OJ from 2008 No. 198, item 1158, as amended –u.p.n. hereinafter.

² OJ No. 27, item 185, hereinafter referred to as Regulation §1 of Regulation

§ 1 in localities where there is a notary, to certify they are authorized personal signature:

1) Mayor (mayor, city president):

a) Authorizing the receipt of letters and parcels a sum of money and receive documents from state agencies and institutions.

b) The statement confirming the status of family and fortune making the declaration.”

³ OJ No. 64, item 592, u.u.r hereinafter.

3. The scope of the authentication

In the light of provisions in force the subject of the s may be an action, facts, or the personal signature or the document. The public administration body has the right to certify certain activities and documents. The rule is , however, that the authentication is made by a notary, exceptions to this rule are found in many legal regulation. However, the lack of systematisation in this area, causes a number of uncertainties and , consequently, the negative effects for users of the statements made by an unauthorized entity.

4. Subjective scope of authentication

Personal scope embraces the entire subjective sphere of authentication, so both those who endorse, and whom to endorse. In practice, it is important to determine the question of who is entitled to exercise the authentication, rather than who is interested in such an endorsement. There is no uniform regulation on the establishment of a general category of entitled persons to carry authentication. On the basis of the existing variety of rules can conclude that the first authentication will be entitled to have the public authorities and, secondly, all these entities that are owned by the original authentication course¹.

5. The form and mode of authentication

The authentication due to its function and purpose should be in writing. Any such action should include the date and place of its preparation , on demand- also the time of the transaction , an indication of the office, the signature of the notary and the notary stamp (Article 97 of u.p.n.). An exception to this rule is Article 101 u.p.n. This provision provides that the Minister of Justice may, by regulation , authorize a local government bodies and banks based in localities where

¹ For ex ample, article 34 paragraph 2, chief Sanitary Inspector may declare , by a decision , water originating from the hole located on the territory of a third country as the natural mineral water, if the competent authority of that State Certifies the compliance of the water requirements of this Act and the regulations issued pursuant thereto and undertakes to carry out regular checks on the extracting, transporting and filling of water. (Law of 25 August 2006 for food safety and nutrition, i.e. Journal of Laws of 2010, No. 136, item 914, as amended); and article 271b§4 the certificate is issued for the period for which financial security has been provided. If financial security has expired before the expiry of the period for which it was adopted, the vessel owner is obliged to notify the director of maritime office which issued the authentication or certified.

there is a notary, to draw up some authentications made by a notary public. Such authentication was included in the Regulation of 7 February 2007 on the compilation of some of the authentication of the local government authorities and banks¹. In accordance with § 1 of mentioned above Regulation, the chairman of the board of municipalities (mayor, mayor and president), in places where there is a notary's office, are authorized to certify personal signature on letters authorizing the receipt of shipments and the amount of money and receive documents from the offices and institutions and the statements confirming the status of family and fortune making the declaration. It is worth noting that the directory listed in the Regulation, which concerns an exception to the authentication of personal signature by the local government is closed. The regulation also contains a reference to the provisions of the Law on Notary form of authentication. This means that any such statement should include the date and place of its preparation, on demand- also the time of the transaction, an indication of the authority headquarters, his signature and stamp. It seems that in light of the provisions referred to above is correct to say that the power to certify can not be moved under power of attorney to others (such as mayor or deputy secretary).

Catalogue of exceptions to this rule have been expanded by the legislature by other provisions of the rank not only statutory. Act of 28 November 2003 on family benefits provided for in article 50 paragraph 3, the possibility of a certificate copy of the ID shown by the authority making the family² benefits. According to Article 20, paragraph 1 in conjunction with Article 3 paragraph 11 of the mentioned Act, the authority is the mayor, mayor, president, or an authorized manager of a social care. It should be noted, however, that the body leaves the authenticated documents in own files. The Act of 2 July 2004 on freedom of economic activity³ in art 27 paragraph 4 permission authenticating compliance with the original copy if the document confirming the identity and nationality of the worker gives the municipal office, which has the appropriate authority to authenticate. It should also be noted that the document authenticated in

¹ OJ. No. 27, item 185.

² OJ No. 228, item 2255

³ Oj No. 73, item 1807

accordance with article 27 paragraph 4 of the Act mentioned above, shall remain on file registration office. Not explained, however, remains the authorized employee. It seems that Principal office worker may be the registration authority, i.e. the head office (mayor, mayor, president). However, to enable it to authorize an employee to act on his behalf in matters relating to the authentication, he should hold such power. Indeed, it may not delegate to someone more rights than he possesses. Meanwhile, there is no legal entitlement to fit copies of documents authenticating compliance with the original and keeping the records by the authority.

6. Summary

Analyzing selected legal provisions relating to the authentication, we may conclude that the legislature act reserved solely for the authentication of a notary public. Exceptions to this rule are clearly set out in law. This means that if the rule of law refers to authentication of, and does not specify that it is a public authority should be understood that this statement is the act falls within the jurisdiction of a notary. It is also worth noting that there is no form in which the authentication should be performed. With the exceptions of the notaries, none of the provisions in question does not specify formal requirements for authentication. At the same time it should be noted that there is also the possibility of analogous application of the Law on Notaries to the other above mentioned laws, or regulations. It could be argued, however, rule that the statement is to be done in such a way that the credibility of authenticated activity or document is not raised doubts. These doubts will eliminate the signature of the person attesting the seal, sign and date established authentication. We should mark however, that the credibility of the document, in many cases is subjective and in the case, for example- no indication of the entity authenticating the residence does not necessarily result in the recognition of an act or document to be unreliable. Summarizing the current discussion can not help noticing that the authenticating organization has an uneven and very divergent regulation. In light of the provisions can be attributed to its dual nature: external- when it comes to authentication made under notary acts or internal- when it comes to authentication made by a public administration body or office worker. Authentication of an external nature differs from an internal nature mainly due to what cause

both types of authentication. The first one takes effect against any third party, the other can be considered reliable only in the official acts of the other cases, the entities are not required to acknowledge such authentication. It is also worth noting that it is against the law to both the lack of specific statutory mandate to make a statement and request to produce documents or authenticated operations, where the rule of law do not constitute so.

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“The Significance of Good Banking Practice in the contractual relations of banks with their clients”

General Remarks

In the recent time the significance of self-regulation in the banking sector has increased, concerning especially contractual relations between banks and their clients (contractors) and, even more importantly, their customers. In order to provide adequate protection for clients and, especially, customers on the market of banking services (which constitutes the largest sector of the financial service market), the banks should not only obey legal regulations concerning such protection (so-called norms of material law¹) but also adopt an adequate pro-customer policy which would guarantee clear and honest rules of economic activity in this sector. It is manifested by the regulations created by the financial institutions (including banks) themselves. The regulations take on the form of so-called principles of good practice. In order not to be seen as unfriendly towards their customers, banks should introduce mechanisms eliminating dishonest market practices which are burdensome for the customers. Furthermore, the bank is an institution of public confidence and, in relation to its client, it should not take unfair advantage of being a professional participant of the market.

The noteworthy element in the field of banks' relationship of obligation are rules of professional deontology in the form of The Principles of Good Banking Practice².

¹ This problem will not, however, be dealt with in this article as the scope of the present subject is too limited and the scope of the aforementioned field of study too broad to present these important subjects here. This subject in reference to banking service market is treated in more detail in: Pisuliński J. 2005. *Niedozwolone klauzule umowne w obrocie bankowym na wybranych przykładach*, Prawo Bankowe, no. 6; Rutkowska E. 2002. *Niedozwolone klauzule umowne w bankowym obrocie konsumenckim*, Prawo Bankowe, no. 7/8; Rutkowska E. 2003. *Ochrona prawna klienta w sferze bankowości detalicznej (regulacje prokonsumenckie)*, Prawo Bankowe, no. 4; Rutkowska E., Sieradzka M. 2008. *Nieuczciwe praktyki rynkowe stosowane przez banki wobec kredytobiorców – konsumentów*; Part I – Prawo Bankowe, no. 2; part II- Prawo Bankowe 2008, 3; Rutkowska-Tomaszewska E. 2009. *Naruszanie obowiązków* *Naruszenie obowiązków informacyjnych banków w prawie umów konsumenckich*, Warszawa, ABC a Wolters Kluwer business.; Mikłaszewicz P. 2008. *Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej*, Oficyna.; Gnala B. 2007. *Ochrona konsumenta usług finansowych. Wybrane zagrożenia prawne*. Wwa. Wolters Kluwer pp. 336.

² The most current version of The Principles of Good Banking Practice is in annex no.1 to Resolution No. 11 XXI of The General Meeting of The Union of Polish Banks 22 April 2010., the text is accessible on www.zbp.pl website.

The concept of Codes of Good Practice.

In the Polish law there had not been any legal definition of a “code of good practices”. It was first introduced in the Countermeasures against Dishonest Market Practices Act of August 23, 2007¹. According to article 2, point 5 of CDMPA, the code of good practices is a set of rules of conduct, in particular ethical and professional rules of businesspeople who committed themselves to abide by these rules concerning one or more market practices.

In the justification of the Act the legislator stated that because creating and obeying certain rules of conduct is voluntary, codes of good practices are, in their nature, self-regulatory.

Self-regulatory system (SRO) is often described as soft law, since both the origin and the application of the codes are based on the assumption that companies accept them voluntarily. The codes of good practices contain rules of conduct whose source is not state legislation but which have been given legal significance. The essence of self-discipline consists, on one hand, in voluntary acceptance of certain rules of conduct (self-regulation), and on the other hand, in building an adequate system ensuring their observance (self-control).

The codes of good practices assume different names, e.g. codes of conduct, deontological codes, ethical codes. Their specific character comes from the fact that they counterbalance the mechanisms of legal regulations limiting the freedom of business activity on the market. The limitations found in the codes of conduct are introduced voluntarily by the companies themselves who accept the rules devised by organizations of which they are members or by trade or business unions.

The Principles of Good Banking Practice

In the field of banks’ relationship of obligations the rules of professional deontology, which take on the form of so-called Principles of Good Banking Practice², have the key

¹ Journal of Laws 171, pos. 1206, further: CDMPA

² More on remarks concerning their significance also in reference to other principles of good practices: Zapadka P. 2007. *Dobre Praktyki Rynku Finansowego-wybrane aspekty*, Prawo Bankowe, no. 7-8; Bączyk M. (in:), Włodyka S. (ed.). 2006. *Prawo umów handlowych*, Warszawa; Mokrysz-Olszyńska A. 2005. *Rola kodeksów dobrych praktyk w ochronie konsumenta* (in:) C. Banasiński (ed.) *Ochrona konkurencji i konsumenta* (studia prawno-

significance. Among these principles we can mention the ones included in chapters: II – the principles of bank's conduct in relation to its clients, IV – the principles of advertising, and VI – the principles of dealing with customers' complaints.

The Principles of Good Banking Practice constitute a set of rules connected with the activities of the banks and concerning banks as institutions, employees of the banks and persons through whom the banks perform banking activities. Banks, being institutions of public confidence, abide by legal regulations, resolutions of bank organizations, standards included in PGBP and good trading practices including: professionalism, diligence, conciseness, conscientiousness and competence.

PGBP, earlier than customer regulations, stressed the necessity of conveying information in a clear, comprehensible way which has become the principle idea of customer protection – protection through information. A customer who is adequately informed of a transaction, especially in the field of financial services, including banking, is, to some extent, able to make a conscious decision. A bank should inform its customer of the sorts and conditions of services provided, explaining differences between services offered and pointing out benefits that a given service would bring and risks connected with it. The principles of bank's behavior towards its clients, the information about services offered, as well as contracts, documents and bank's letters to customers ought to be formulated in a clear and comprehensible way.

According to the resolutions of PGBP, advertising campaigns of banks should honestly inform their clients of their activities. The banks should provide their clients with full and truthful information about any possibilities of obtaining additional benefits, as well as about costs and risks connected with any particular service offered, thus enabling their clients to make the right choices. The appraisal of services provided by banks is made by clients and, therefore, banks should not refer in their advertisements to the offers of other banks or create negative

ekonomiczne), Warszawa; Roter A. 2006. *Zasady dobrych praktyk na rynku Consumer finance w Polsce* (in:) Edukacja konsumencka-cele, instrumenty, dobre praktyki, WSPiZ, Warszawa.

image of their competitors. In their advertisements banks should not question the solidity of other banks or evaluate their activities.

In their places of customer service banks should inform their clients of existing procedures for lodging complaints with specific reference to manners and places in which clients can make a complaint. After receiving a complaint from a client banks should inform him/her of this fact, as well as of the possible date of answering the complaint and the bank's branch responsible for answering it. The complaints lodged by clients concerning the operation of the bank should be examined thoroughly and as quickly as possible. The maximum time for answering should not be longer than 30 days and in particularly complex cases – 90 days.

PGBP underline the conciliatory way of settling disputes between banks and their clients, pointing out that banks should submit on time relevant documents and explanations to the Banking Arbitrator*¹ if client applies to such Arbitrator, and if a case is beyond the power of banking consumer arbitration and there is no possibility of conciliatory settlement through mediation with the client, banks should inform the clients of arbitration system operated by bank unions (Związek Banków Polskich - The Union of Polish Banks) and how to communicate with these institutions.

It is worth noting that the Principles of Good Banking Practice, which are supposed to guarantee honest and clear rules of banking services, stress that the banks cannot take advantage of their professionalism against their clients' interest and they should act in accordance with all the agreements, having in mind their own interest and the interest of their clients. The Principles also point out that the relations with clients should be based on the bonds of mutual trust which

¹ An institution running out-of-court proceedings for customers – bank clients was established by the Union of Polish Banks (ZBP) during the 12th General Meeting of ZBP on 9th May 2001 when the Regulations of banking consumer arbitration were established; presently: Annex to Resolution no. 15 of 17th General Meeting of ZBP, 26 April 2006. Regulations of Banking Consumer Arbitration. More on the arbitrator's role in the disputes between banks and their clients, see: Marczyńska K. 2005. *Stosunki między bankiem a klientem na tle skarg klientów do Arbitra Bankowego*. Prawo Bankowe no. 6; Myczkowska A. 2002. *Rozstrzyganie sporów między instytucjami a klientami. Arbiter zamiast sądu*, Rzeczpospolita, no. 18. Jeziolowicz N. 2001. *Pozasądowe postępowanie rozjemcze dla indywidualnych klientów banków*, „Bank”, no. 3; Rutkowska E. 2002. *Pozasądowe postępowanie rozjemcze dla klientów banku – Bankowy Arbitraż Konsumencki*. Prawo Bankowe, no. 3, pp. 41–47.

require from the banks honesty, thoroughness, accuracy and comprehensibility of bank's relationship of obligation.

Dishonest market practices connected with application of good practice codes.

The Countermeasures against Dishonest Market Practices Act, introducing a ban on dishonest market practices towards clients¹, points out the ones which are connected with the application of good practice codes².

On the grey list of dishonest practices there are the ones described in Article 11 of CDMPA (the application of good practice codes whose articles are not in conformity with the law) and in Article 5, section 2, point 4 of CDMPA (not abiding by the code of good practices which a businessperson voluntarily signed if the person informs the public that he/she is actually bound by it).

According to Article 11 of CDMPA the regulations in codes of good practices are unlawful if they circumvent the law or directly violate legal norms. In this case it is the creator of a given code (company or business union responsible for introducing a code and making sure it is observed) that commits dishonest market practices and not the signatories to the code. This is because the entity creating the code is responsible for the unlawful regulations within the code. In practice, the responsibility usually falls to members of internal structures of business associations.

According to Article 5, section 2, point 4 of CDMPA it is dishonest on the part of a businessperson to misinform the customers that they are bound by a code of good practices that they voluntarily signed when they actually do not conform to its rules (Article 5, section 2, paragraph 4 of CDMPA).

¹ According to Article 4 of CDMPA, a market practice of companies towards clients is dishonest if it contravenes good customs and in a significant way distorts or may distort market behavior of an average client before concluding an agreement concerning a product, during or after concluding it.

² More in: Stefanicki R. 2008. *Miejsce kodeksów postępowania w nowej regulacji dotyczącej nieuczciwych praktyk handlowych*, Rejent, no. 4 pp. 103-114.

On the black list of dishonest market practices there are practices described in Article 7, point 1 of CDMPA (informing customers that a company is bound by a code of good practices when he/she actually is not) and Article 7 paragraph 3 of CDMPA (claiming that a code has been approved by a public governing body or other authority when it is not true). In this case the legislator decided that the characteristic feature of the above practices is that they mislead the public and for this reason he has categorically forbidden them. For the practice to be classified as one described in Article 7 paragraph 1 of CDMPA it is enough to decide that this particular market behavior is unacceptable regardless of its potential or actual influence on the customer's market behavior. The aim of this regulation is to prevent companies from dishonestly taking advantage of positive connotations that clients usually have of ethical codes. Customers assume that if a businessperson has signified the code of good practices, then he/she obeys its rules. If a businessperson informs that they are a party to such an agreement and they are not it misleads the customer.

Including legal definitions of good practice codes into the Countermeasures against Dishonest Market Practices Act and describing any dishonest practices connected with applying the codes means that these documents, which do not contain any legal obligations, have been granted legal significance. Such qualification of the codes means that they lose their internal-only character. Deontological principles which are not in conformity with legal regulations are now as legally meaningful as legal regulations themselves when it comes to the responsibility for their application. This means that the codes of good practices received their place in the sphere of legal regulations, although they are not a part of state law.

The essence of the codes of good practices is that they are not required by legislation or other regulations but that they are created by businesspeople and their unions themselves (so-called self-regulatory system). The codes of good practices may be created by the members of a given profession and binding only for these members who are their signatories.

The verification of correct application of the norms prescribed by the code falls to the internal authorities of a body which created these norms. Introducing certain rules of market competition requires establishing bodies responsible for enforcing obedience to the rules as well

as sanctions for breaking the rules. Independence and freedom of choice cannot justify accepting and applying rules of conduct which are against the law because if the codes are against the law, their application has to be treated as a dishonest market practice.

The Countermeasures against Dishonest Market Practices Act does not force companies to establish a code of good practices in a given profession, nor does it interfere in any self-regulations. It merely establishes legal criteria and sometimes bans particular practices thus building a legal framework for the creation of the codes. The regulations promote such codes which function correctly concerning their conformity to law and adequate enforcement by internal authorities of business unions. Thus it will be possible to eliminate the codes which do not conform to legal rules and check whether a company does not use the code only for temporary advertising purposes.

In practice, it is a flaw of some codes that businesspeople use them only as marketing tools. This is because customers perceive such codes as signs of quality which increase their confidence in the company which is a signatory to such a self-regulation.

The Countermeasures against Dishonest Market Practices Act gives individual customers wide possibilities to sue business entities for dishonest market practices. In the case of such practice customers whose interests were threatened or violated may demand: ending the practice, remedying its effects, publishing a single or multiple statement of an adequate content, making up for the damage it caused, particularly annulling the agreement with obligatory mutual return of benefits and reimbursing by a business entity the costs of obtaining a product¹, paying a certain sum of money to a given social institution connected with supporting Polish culture and national heritage or the customer protection (Article 12 of CDMPA).

The CDMPA does not designate one judicial body, e.g. The Court of Competition and Customer Protection, to judge on cases concerning dishonest market practices. In the cases of claims resulting from dishonest market practices, including those concerning codes of good

¹ Customer may demand deeming an agreement invalid if its invalidity results from a different legal regulation, e.g. when the agreement is concluded due to dishonest market practice preventing the customer from stating his will consciously or freely. Such wording of the regulation poses problems – more in Michalak A. 2008. *Przeciwdziałanie nieuczciwym praktykom rynkowym. Komentarz*, C. H. Beck, Warszawa.

practices and those concerning property¹, a judgment can be made by a conciliatory body specializing in settling bank – customer disputes, that is by Banking Arbitrator, thus eliminating them from the banking consumer sphere.

The Significance of Principles of Good Banking Practice

The Principles of Good Banking Practice presented here describe general requirements for banks concerning relationship with their clients² as well as other areas.

The principles stress the necessity for providing a customer with comprehensive information in different phases of obligation relation, so as to minimize his deficit of knowledge concerning the principles of providing complicated financial services by professional financial institutions. They also stress that a bank should make all possible efforts to make the information, that it gives to clients, comprehensible, unambiguous and clear, taking into account client's level of knowledge and lack of professionalism in the field of banking. This aim is supposed to be achieved by internal procedures prepared by banks which regulate the scope and ways of providing clients with information, both obligatory and required by an individual client if providing it is not *contra legem*.

Customer has a right to complete and unambiguous information on matters significant for securing his legal interest in the present conditions of globalization of legal activity and multitude of offers on the market which do not always give truthful and sufficient information and sometimes covertly mislead clients threatening their individual and collective interest³. The above discussion shows that customer's right to truthful and adequate information, which is a

¹ It must be assumed that claims presented in Article 12 of CDMPA concern property in accordance with the aim of the Act which is supposed to protect economic, and that also means property interests of customers - A. Michalak, *op.cit.*

² It is worth mentioning that the codes of conduct use the form: "client" or sometimes "individual client" and not "customer", however they do not give the definitions of these terms; this may create doubts who the beneficiary of the regulation is.

³ The sentence of High Court, 20th June 2006, III SK 7/06, OSNP 2007, nr 13-14, poz. 207.

part of the broader model of sound customer protection formed by the EU's legislation, is treated as one of the principles of good banking practice.

The legal significance of codes of conduct on the financial service market is also visible in the judicature of Banking Arbitrator and other non-court conciliatory bodies dealing with alternative ways of settling disputes between banks and customers – among others Conciliatory Court at The Committee for Financial Supervision (KNF)¹, which can sometimes base their rulings solely on the codes of good practices.

The recommendations of PGBP take the form of postulates (e.g. banks do not abuse their rights in relation to their counterparties). At the same time they also have regulative function as they formulate additional obligations of the bank, not stated directly in the agreement, they describe “common customs” (article 254 § 1 of the civil code), specifying the so-called professional care of a bank (art. 355 § 2 of the civil code), formulating the rules of loyal behaviour of the bank in the case of its liability for damages².

PGBP point out that banks cannot take advantage of their professionalism in a way which is against their clients' interest. The relations with clients are supposed to be based on trust, which requires from banks adequate diligence, precision and clarity of banking obligation relations which is a guarantee of honest and healthy rules of economic activity in the field of banking services. Their significance may be realized in the practice of law application in banking consumer activity - the principles of good practices may serve as factors in the formulation of general clause of “good customs” which occurs in the definition of forbidden agreement clauses³, dishonest market practices¹, practices violating collective interest of customers² but also

¹ The Conciliatory Court at KNF started its work on 31 March, 2008. More in Więclaw E. 2007. *Rusza sąd dla klientów*, Rzeczpospolita, 24–25 listopada., p. B 1; Kluza S. 2007 *Powstanie sąd polubowny przy Komisji Nadzoru Finansowego*, Rzeczpospolita z 9 października p. C 8.; Rutkowska E. 2008. *Sąd Polubowny przy Komisji Nadzoru Finansowego nowym rozwiązaniem w zakresie alternatywnych sposobów rozwiązywania sporów między uczestnikami rynku finansowego*, ADR, no. 4, pp.77-89; Rutkowska E., Wojtczak D. 2008. *Alternatywne sposoby rozwiązywania sporów między bankiem a konsumentem usług bankowych*, Prawo Bankowe, no. 7/8, pp. 72-88.

² Bączyk M. (in:) Włodyka S. (ed.). 2006. *Prawo umów handlowych*. Warszawa, p. 1076.

³ According to Article 385 § 1 c.c. the terms of agreement not agreed on individually do not bound him if they formulate his rights and obligations in a way which are contrary to good customs and grossly threaten his interest (forbidden terms of agreement). More on the subject in: Skory M. 2007. *Klauzule abuzywne – zastosowanie przepisów Dyrektywy 93/13 w Polsce i wybranych krajach Unii Europejskiej (Niemcy, Anglia, Francja, Czechy, Słowacja, Węgry)*, UOKiK, Warszawa, pp. 12-16; Kruszewska-Sobczyk K., Sobczyk M. 2004. *Niedozwolone*

as an element forming the content of legal relationship stemming from the agreement pointed at in Article 56 of the civil code.

We must hope that principles of good practices, voluntarily accepted by banks will play significant role in the customer protection, especially customer on the banking service market and their application in the banking practice will contribute to forging correct contractual relations between a bank and client in the course of providing financial services.

klauzule w umowach zawieranych przez konsumenta, Radca Prawny nr 4, pp. 109-123; Świstak A. (in:) Łętowska E., Osajda K. (ed.) 2005. *Nieuczciwe klauzule w prawie umów konsumenckich*, Warszawa, s. 34 i n. I. Wesółowska, *Niedozwolone postanowienia umowne* (in:) C. Banasiński. 2004 (ed.), *Standardy wspólnotowe w polskim prawie ochrony konsumenta*, Warszawa; Rutkowska E. 2000 *Ochrona konsumenta usług bankowych przed nieuczciwymi klauzulami umownymi w świetle ostatniej nowelizacji kodeksu cywilnego*, Prawo Bankowe, no. 9; Pisuliński J. 2005. *Niedozwolone klauzule umowne w obrocie bankowym na wybranych przykładach*, Prawo Bankowe, no. 6; Rutkowska E. 2002. *Niedozwolone klauzule umowne w bankowym obrocie konsumenckim*. Prawo Bankowe, no. 7/8.

¹ More in: Sieradzka M. 2008. *Ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym. Komentarz*, Wolters Kluwer, Warszawa; Michalak A. 2008. *Przeciwdziałanie nieuczciwym praktykom rynkowym. Komentarz*, C.H.Beck, Warszawa; Stefanicki R. 2009. *Ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym. Komentarz*, Lexis Nexis, Warszawa; Nieuczciwe praktyki rynkowe. Przewodnik, UOKIK, Warszawa 2008.

² By the practice violating collective interests of customers we understand unlawful activities of a company and in particular: applying terms of such models of agreements that have been registered as forbidden as stated in Article 479 of the Act of 17 November 1964 – Civil Code (Journal of Laws, pos. 296, with subsequent changes); contravening the obligation of providing customers with truthful and full information; dishonest market practices or unfair competition (Article 24 of the Act of 16 February 2007 on the protection of competition and customers (Journal of Laws No. 50, pos. 331). More in Sieradzka M. (in:) Kohutek, K. Sieradzka M. 2008 *Ustawa o ochronie konkurencji i konsumentów. Komentarz.*, Warszawa; Skoczny T. 2009 (ed.), *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, C. H. Beck, Warszawa, pp.933-1060; Banasiński C., Piontek E. 2009. *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, Lexis Nexis, Warszawa.



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