

DESCRIPTION FOR THE GENERAL PUBLIC

One of the basic principles of contract law is that claims arising from obligations may be pursued in court. An exception in this respect are natural (also incomplete or unsuable) obligations, i.e. legal obligations with respect where to the creditor is not able to pursue their fulfilment resorting to State compulsion. Nonetheless, they remain obligations of legal character, and therefore, if a debtor makes a performance in fulfilment thereof, the debtor cannot later demand that such performance be returned, pleading unsuability of the same. The project concerns this particular category of obligations.

The notion of *obligatio naturalis* appeared as early as in the Roman law, which explains why it is so common in many legal orders. It has however evolved to have different meanings and now is understood heterogeneously. The Roman grounds of unsuability have become outdated, yet despite that the modern law has returned to the discussed category of obligations due to various values and interests.

Typical examples of natural obligations are obligations with respect where to a claim has been prescribed and obligations resulting from gambling or wagering (with some exceptions). The remaining examples are not understood homogeneously in the legal literature. This pertains i.a. to such issues significant from the perspective of the practice of law as: stock exchange forward transactions similar to gambling or wagering, the consequences of relinquishing of a claim in a civil trial for plaintiff's re-pursue of a given claim in the future, or an instruction by a donation or in a testament.

Natural obligations constitute a legal construct significant for the entire general part of the law of obligations, and in particular for defining and proper understanding of the term "obligation". The gravity of this problem may be demonstrated by numerous monographs written on this topic i.a. in German, Austrian, English and French literature. However, the problem of natural obligations in the Polish study of law has not yet been described in any comprehensive paper, and particular studies have been limited to a general characteristic thereof. The planned research is to constitute the first attempt at full and exhaustive description of this institution under Polish law.

The principal objective of the project is to answer the question concerning the significance of qualification of a given obligation as a natural obligation under Polish law. Firstly, it requires an assessment of usefulness of this construction, i.e. it requires determination, whether it is at all purposeful to distinguish such a specific category of obligations in the Polish legal order, as well as whether particular instances qualified as natural obligations have sufficiently many common features for one to be able to describe them as a uniform category. Secondly, there are doubts whether special legal institutions prescribed for suable obligations apply to natural obligations. What is meant here above all is the admissibility of: an off-set; demand for compensation for non-performance or improper performance of an incomplete obligation, or claims for payment of interest and the possibility to establish a pledge as a security of unsuable claims.

The issue of natural obligations is connected with many specific questions: on one hand, whether it is admissible also to contractually create a natural obligation, on the other hand, whether the lawmaker enjoys full discretion by ascribing the unsuable character to particular obligations – in such case, after all, the possibility to compulsorily enforce a debt is limited. This problem requires a general perspective, in particular it needs to be looked at from the point of view of the broadly understood right to due process and the constitutional guarantees of contract enforceability. There also arise questions concerning attempts at enforcement of natural obligations before a court of law, i.a. whether a court takes unsuability into consideration *ex officio*, or whether a court does so, only if a relevant pleading is presented. The aim of the project is to dispel all these doubts.

The project may be a significant contribution to development of the study of Polish civil law. Precise description of categories of natural obligations will make it possible to better understand such fundamental terms of the civil law as "obligation", or "suable". Moreover, specification of legal effectiveness of natural obligations and clear description of particular instances thereof will have positive results for legal certainty, and will make it possible to better understand the notion of suability, and thus will be beneficial for all citizens. The research results might also have an impact on the rulings issued by courts.