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*The Principle of Disposition in Proper Enforcement Procedure*

**SUMMARY**

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## **The Principle of Disposition in Proper Enforcement Procedure**

The doctoral dissertation I prepared focuses on the issue of principle of disposition in proper enforcement procedure. The principle of disposition (disposability) is one of the guiding principles of judicial enforcement procedure. At the same time, it is worth emphasizing that the principle of disposition is also one of the most important and fundamental principles of civil procedure law in general, including enforcement procedure. Polish civil procedure is based on the principle of disposition, which is most prominent in enforcement procedure. Therefore, a broad and multifaceted study of this principle in the legal literature is very important for its understanding.

Thus, the subject of my dissertation is a detailed analysis of the role of the principle of disposition at each stage of the proper enforcement procedure, that is, the procedure aimed at carrying out enforcement. It should also be noted that the proper enforcement procedure is conducted on the basis of an enforcement order, which serves as the foundation for enforcement.

This dissertation is divided into five chapters and includes an introduction and conclusion. Most chapters are further divided into subchapters.

The first chapter of the thesis discusses the historical aspects of the development of the disposition principle and its importance in civil procedure. This chapter presents the most important issues concerning the development of the principle of disposition in historical terms. In particular, it notes that the extent to which the principle was applicable underwent significant changes in different historical periods.

The second chapter defines the concept of the disposition principle in enforcement procedure and discusses its place in the system of civil procedure rules. This chapter presents a catalog of the principles of civil procedure and the principles of judicial enforcement procedure. It considers the fact that the principle of disposition, as part of a coherent system of procedural principles, is directly or indirectly related to every other principle, forming the overall system.

The third chapter of the dissertation addresses the creditor's ability to choose the route for satisfying their claim in civil procedure. In particular, it explores the choice between enforcement procedure or bankruptcy and restructuring proceedings. The debtor can and should voluntarily fulfill their obligation to the creditor. However, if they

fail to do so, the creditor may obtain performance through proceedings primarily regulated by the following laws: Code of Civil Procedure, Bankruptcy Law, and Restructuring Law. The issues discussed in this chapter constitute a significant novelty in the Polish study of enforcement law, as no prior study in Polish legal literature has treated this issue in a similar manner.

One can conclude that the problem of the creditor's choice of the method for asserting a claim belongs to the scope of my work and, therefore, to the problem of disposition in enforcement procedure. Admittedly, the choice of the route of recovery should be made by the creditor before the initiation of enforcement procedure, which may suggest that it is not a matter of disposition in enforcement procedure. However, if the issue of initiating (asserting a claim) or not initiating (refraining from initiating, i.e., renouncing the assertion of a claim) enforcement procedure is typically regarded in studies as a manifestation of substantive disposition in enforcement procedure, the same treatment should be applied to the issue of choosing the route of recovery between enforcement procedure and bankruptcy and restructuring proceedings. In particular, the bankruptcy of the debtor is, in fact, a universal debt enforcement, as it encompasses all of the debtor's assets. Additionally, bankruptcy or restructuring proceedings may be initiated in the course of enforcement procedure and at the request of the creditor conducting the procedure. Thus, the mere initiation of one of these proceedings can have a major impact on pending enforcement procedure.

The fourth chapter of the work provides a detailed analysis of material disposition (disposability), which represents the right to use and manage (dispose of) the subject of the proceedings. Material disposition is examined concerning the various stages of the enforcement procedure. Disposability, in this context, is understood as the parties' right to exercise their rights and make decisions regarding claims. Generally, it is considered that a party in civil procedure can freely dispose of their subjective (substantive) rights. Therefore, in the material aspect, the disposition in civil procedure expresses the right to manage the subject of the procedure.

In light of the comments made in my dissertation, the scope of material disposition in civil litigation includes actions such as the initiation of proceedings, the delineation of the boundaries of the legal protection sought, the amendment of the demand for legal protection, the withdrawal of the lawsuit, and three material disposition acts during the course of the proceedings, namely: waiver of the claim, admission of the claim, and

conclusion of a court settlement. Due to the nature of enforcement procedure, the scope of material disposition is shaped somewhat differently in these proceedings compared to civil litigation. In this regard, it should be emphasized that in proper enforcement procedure, to a greater extent than in civil litigation, the creditor is the 'host' of the procedure, usually deciding on the initiation of the proceedings and subsequently having a decisive impact on their course. Consequently, in a proper enforcement procedure, the issues of material disposition are qualified by:

- the initiation of proceedings,
- the delineation of boundaries for legal protection sought, including the modification of the claim,
- actions related to halting the course of the enforcement procedure, i.e., suspension of the proceedings, the bailiff withholding their activity and withholding of the bailiff's activity, or withholding of enforcement by the court,
- actions related to the termination of the proceedings, i.e., discontinuation of the proceedings and termination of the proper enforcement procedure by effective execution of the enforcement order.

Chapter five, on the other hand, discusses the issue of formal disposition in proper enforcement procedure. Formal disposition generally refers to the ability to manage procedural rights, procedural actions, and the course of proceedings. Consequently, this type of disposition manifests itself in the subsequent actions of the parties that shape the course of the initiated proceedings, either in whole or in part. This particularly applies to the ability to object to the actions of the enforcement procedure bodies by filing appeals and making procedural motions during such proceedings.

According to the considerations contained in my dissertation, formal disposition generally refers to offensive and defensive measures in the proceedings. Such measures in enforcement procedure include appeals, adverse action, and exemption action.

Appeal measures are used in enforcement procedure as a formal defense against improper conduct of enforcement, or even more broadly, conduct of the enforcement procedure, meaning conduct inconsistent with the provisions of the enforcement law. The issue of appeal measures is discussed in terms of the admissibility of the measure in view of the subject of the appeal, the entitlement to file an appeal, the form required by law, and the time limit for filing it. These issues are closely related to the issue of disposition in the proceedings.

On the other hand, substantive defense against enforcement is provided by anti-enforcement actions. These include the adverse action, vested in the debtor (Articles 840 and 843 of the Code of Civil Procedure) and the intervention (exemption) action, vested in a third party (Articles 841 and 843 of the Code of Civil Procedure ). These actions are discussed in my dissertation concerning the principle of disposition in enforcement procedure.