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Transfer of Rights and Obligations Arising from a Contract without Consumer's Consent as a Prohibited Contractual Clause

Przeniesienie praw i obowiązków wynikających z umowy bez zgody konsumenta jako niedozwolona klauzula umowna

ABSTRACT

The paper includes an analysis of one of the abusive clauses regulated in the Polish Civil Code. The issue of prohibited contractual terms is of considerable importance due to the fact that it is related to contractual relationships with entities having the status of consumers, commonly established in commercial transactions. The clause was indicated by the legislator in Article 385^3 (5) of the Civil Code and refers to the transfer of rights and obligations from a contract without the consumer's consent. It has not yet been covered by a detailed analysis. The author pointed out the general classification elements for the provision of Article 385^3 (5) of the Civil Code as an abusive clause, in the form of concluding a contract with a consumer and the lack of individual arrangements in its scope. She concluded that the above-mentioned provision applies only to the assignment of contract carried out by a party without the consumer's consent. A result of introducing such an abusive clause into a contract is a peculiar sanction, i.e. the partial ineffectiveness of the legal transaction (Article 385^1 § 2 of the Civil Code).

Key words: Civil Code; prohibited contractual clauses; abusive clauses; entrepreneur; consumer

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INTRODUCTION

The issue of abusive clauses is of significant practical importance due to the fact of being structurally related to the contractual relations commonly established in commercial transactions with entities who have the consumer status. Pursuant to Article 385^3 (5) of the Civil Code,[1] in case of doubt, prohibited provisions include, i.a., those that allow the contractor to transfer rights and obligations arising from the contract without the consumer's consent. This question raises doubts as to interpretation in the context of the general rules of the institution of contract assignment (Articles 509–534 CC), assignment of receivables (Articles 509–518 CC) and debt takeover (Articles 519–534 CC), as well as the provisions governing prohibited contractual clauses (Articles 385^1–385^3 CC). The discussion does not cover the admissible form of the provision under Article 385^3 (5) CC, taking into account other general principles, primarily determined by the principle of freedom of contract (Article 353^1 CC), the institution of invalidity of a legal act (Article 58 CC) or the relative ineffectiveness of a contract (Article 59 CC).

THE CONCEPTS OF ASSIGNMENT OF CONTRACT, ASSIGNMENT OF RECEIVABLES AND ASSIGNMENT OF DEBT

On general terms, the transfer of rights and obligations held by civil-law entities under the contract means the assignment of contract,[2] i.e. the replacing an existing party to an obligation relationship by a third party. This institution has not been regulated normatively by the legislature. It is generally accepted, however, that in such a case the provisions on the assignment of receivables and debt takeover apply cumulatively.[3] This may be done as part of one complex act or successively,

[1] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2023, item 1610, as amended), hereinafter: CC.

[2] The term "assignment of contract" is used, i.a., by the Supreme Administrative Court in its judgments of 14 April 2015 (II FSK 187/13, LEX no. 1710136) and of 17 August 2016 (II FSK 881/14, LEX no. 2142235), as well as by the Voivodeship Administrative Court in Warsaw in its judgment of 11 February 2015 (III SA/Wa 2234/14, LEX no. 1817155). Scholars in the field and the judicature also use such terms as "contractual change of a party to the contract", "cumulative assumption of the rights and obligations of a party to the contract", "taking over the position of a party to the contract" or "taking over the contract". See P. Drapała, *Przejęcie długu, przejęcie praw i obowiązków wynikających z umowy (zmiana strony umowy)*, Warszawa 2016, p. 261 ff.

[3] As in, i.a., the judgments of the Supreme Court of 6 November 1972 (III CRN 266/72, OSNC 1973, no. 9, item 160), with commentaries by Z. Policzkiewicz-Zawadzka (OSPiKA 1973, no. 8, item 194) and A. Kubas (PiP 1974, issue 11, p. 169), of 26 September 2008 (V CSK 105/08, LEX no. 512022), and of 17 May 2012 (I CSK 315/11, LEX no. 1226826).

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provided that the legal acts performed by the parties contain elements necessary for both the aforementioned institutions.[4]

The assignment of contract should be distinguished from the assignment of receivables, which, under Article 509 CC, does not require the consent of the debtor. According to the aforementioned provision, the creditor may transfer the receivables to a third party (assignment) without the debtor's consent, unless it would be contrary to the law, a contractual reservation, or a characteristic of the obligation. Together with the receivable, all related rights, in particular the claim for overdue interest, are transferred to the purchaser. While Article 509 CC refers to the assignment of receivables, understood as the transfer of all unfulfilled rights, both principal and incidental, that make up particular receivables,[5] it should be considered that the provisions governing the assignment of receivables also apply to the assignment of individual rights under the contract.

The above-mentioned rules concerning the assignment of receivables also apply to debt takeover (by its very nature including both unfulfilled principal and incidental obligations), which in turn, depending on the specific case, requires the consent of the debtor or creditor (Article 519 § 2 CC), at the same time constituting a prerequisite for the effectiveness (*conditio iuris*) of a legal act (Article 63 CC). The assignment of debt may take place by means of an agreement between the creditor and a third party, with the consent of the debtor (whereby the debtor's statement may be submitted to either party) or by an agreement between the debtor and a third party with the consent of the creditor (in such a case, the creditor's statement may also be submitted to either party, but it is ineffective if the creditor was not aware that the person taking over the debt was insolvent). This means that the assumption of one or some of the debtor's obligations under the contract requires the consent, expressed by the debtor or the creditor, respectively, depending on the specific situation.

However, a significant caveat must be made here. While in the case of assignment of a contract there is a transfer of rights and obligations arising from the

[4] Judgment of the Court of Appeal in Warsaw of 2 December 2019, VII AGa 1379/18, LEX no. 3103356.

[5] Incidental rights and obligations differ from principal rights and obligations in that they are auxiliary in nature, aimed at the proper performance of principal obligations, and enable better use of the performance by the creditor. However, the legal nature of obligations in this respect is not affected by whether they constitute the *essentialia*, *accidentalia* or *naturalia negotii* of a specific contract. This is determined by their purpose and function. See, i.a., S. Grzybowski, [in:] *System Prawa Cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Wrocław 1985, p. 86; A. Klein, *Elementy zobowiązaniowego stosunku prawnego*, Wrocław 2005, pp. 42–43, 154, footnote 153; T. Dybowski, A. Pyrzyńska, [in:] *System Prawa Prywatnego*, vol. 5: *Prawo zobowiązań – część ogólna*, ed. K. Osajda, Warszawa 2020, pp. 223–224; W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania. Zarys wykładu*, Warszawa 2009, p. 52; Z. Radwański, A. Olejniczak, *Zobowiązania – część ogólna*, Warszawa 2016, p. 15.

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contract which have not been fulfilled at that time, there is no reason to say that in the case of assignment of receivables or takeover of debt there is only a transfer of unfulfilled rights or obligations accordingly. The same applies to the acquisition of certain rights of a party, as well as the transfer of one or some of that party's obligations. This is because the legal position of the rightholder is linked with various obligations and the legal situation of the obligated with a number of rights.[6] They are bound by general rights and obligations resulting from general clauses of contract law, such as the obligation of the creditor to cooperate with the debtor in the performance of the obligation, which is correlated by the right of the debtor to demand such conduct from the creditor (Article 354 § 2 CC). Furthermore, certain rights or obligations of a party are connected with other rights or obligations that are functionally related to the exercise of those rights or obligations.[7] This means that, in the event of assignment of receivables or assignment of debt, they are transferred to the assignee. For example, in a contract job agreement (Pol. *umowa zlecenia*), one of the statutory powers of the contractor is the right to request an advance payment if the performance of the contract requires expenses to be borne (Article 743 CC), which is functionally connected with the obligation of the contractor to use the principal's money only in his interest, and thus for the proper performance of the obligation (Article 741 CC). On the other hand, the principal has the obligation to make an advance payment upon contractor's request if the performance of the contract requires expenses, functionally connected with the principal's right to demand that the money is used in his interest.

It should be stressed that the assignment of contract, the assignment of receivables (including the transfer of one or some rights), as well as the takeover of debt (also a specified one or selected obligations) do not lead to a change in the contract, referred to, i.a., in Article 77 § 1 CC. This is so because in such a situation there is a "change of the contracting party" without affecting the continued obligation relationship, i.e. its content.[8]

CONCEPT OF PROHIBITED CONTRACTUAL CLAUSE

The analysis should start with listing the prerequisites for considering a contractual term as prohibited. They result from Article 385[1] CC. According to this provision, the terms of a contract concluded with a consumer that have not been individually agreed upon do not bind him or her if they shape his or her rights and obligations in a manner contrary to good morals, grossly violating his or her inter-

[6] Cf. W.J. Katner, *Cesja niektórych wierzytelności konsumenckich*, "Glosa" 2006, no. 1, p. 43.
[7] Cf. *ibidem*.
[8] Cf. P. Drapała, *op. cit.*, p. 262.

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ests. This does not apply to terms specifying the main performances of the parties, including price or remuneration, if they are formulated in an unambiguous manner. In view of the above, the total conditions for considering a clause prohibited are as follows: 1) the contract is concluded with the consumer; 2) the contractual term was not the subject of individual arrangements; 3) the clause determines the rights and obligations of the consumer in a manner contrary to good morals; 4) the term causes a gross violation of the interests of the consumer; 5) the unambiguously worded term does not apply to the main performances of the parties. It follows from the literal wording of Article 385^1 CC, that the overriding nature of the classification in question should be attributed to the requirements set out in points 1 and 2.

Taking into account the above, the clause may only be considered prohibited in relation to contracts concluded between an entrepreneur (Article 43^1 CC) and a consumer (Article 22^1 CC), i.e. as part of semi-professional (consumer) trade. On the other hand, the term is not considered an abusive clause if the contract is concluded in professional trade (between entrepreneurs), semi-professional (except when the party to the contract is a consumer) and non-professional (in a relationship between entities that do not have the status of an entrepreneur).

In turn, the prerequisite of a lack of individual arrangement with the consumer will apply when the consumer has no real influence on the arrangement. It therefore concerns unilateral interference in the content of the contract by the consumer's counterparty. This applies specifically to contractual terms taken from a model contract proposed to the consumer by the counterparty (Article 385^1 § 3 CC). It is assumed that the actual influence takes place when the clause was worded by the consumer and included in the contract at their request, or when it was the subject of negotiations between the parties and the consumer had a conscious real influence on its content.[9]

Another prerequisite, this time of a secondary nature, which must also be taken into account when classifying a given contractual term as prohibited, is the determination of the consumer's rights and obligations in a manner contrary to good morals. Pursuant to Article 385^2 CC, the assessment of the conformity of a contractual term with good morals is made according to the state of affairs as of the moment of conclusion of the contract, taking into account its content, the circumstances of its conclusion, and taking into account contracts related to the contract containing the term being assessed.

The prerequisite in the form of a gross violation of the consumer's interests means that, first of all, the clause must not result in an unjustified, significant disproportion thereof to the detriment of the consumer, taking into account the rule of broader protection of the consumer as the weaker party of the legal relationship.[10]

[9] As in M. Bednarek, [in:] *System Prawa Prywatnego…*, vol. 5, pp. 810–811.

[10] See decision of the Supreme Court of 4 August 2023, I CSK 3925/22, LEX no. 3590658.

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The above prerequisites are of a positive nature, i.e. their occurrence determines the classification of a given clause as abusive. On the other hand, the last of them, also of a secondary nature, i.e. "the unambiguously worded term does not apply to the main performances of the parties", is of a negative nature. This is so because the legislature provides that a contractual term that refers to the main performances of the parties, including price or remuneration, cannot be considered prohibited if is formulated in an unambiguous manner, i.e. a manner raising no doubts.

INTERPRETATION OF THE CLAUSE REGULATED IN ARTICLE 358^3 (5) CC

Pursuant to Article 385^3 (5) CC, in case of doubt, as abusive are considered those contractual terms that in particular allow the consumer's counterparty to transfer the rights and obligations arising from the contract without the consumer's consent. An analysis of the clause resulting from this provision, in the light of the prerequisites for considering it as a prohibited contractual term, requires pointing to the correct interpretation regarding the statutory wording: "transfer of rights and obligations resulting from the contract". The above raises doubts of scholars in the field. There are two positions in this regard. According to the first position, a prohibited clause within the meaning of the above-mentioned provision is one that concerns the transfer of all (cumulatively) rights and obligations arising from the contract without the consumer's consent. This means that it only covers terms relating to the assignment of the contract by the consumer's counterparty.[11] On the other hand, it does not apply to clauses concerning the transfer of designated (certain) rights or obligations separately. In the light of the second position, Article 385^3 (5) CC also provides for a prohibition of the transfer of individual rights or obligations without the consent of the consumer.[12]

The position that Article 385^3 (5) CC applies solely to the assignment of contract made by the consumer's counterparty is supported by linguistic interpretation. In

[11] As in judgment of the Supreme Court of 26 September 2008, V CSK 105/08, LEX no. 512022; judgment of the Court of Appeal in Warsaw of 20 March 2019, VI ACa 1118/17, LEX no. 3029689; W. Popiołek, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[10]*, ed. K. Pietrzykowski, Warszawa 2018, p. 1309; P. Litwiński, *Przelew wierzytelności konsumenckiej a udostępnianie danych osobowych konsumenta*, "Glosa" 2004, no. 13, p. 14; B. Krzyżagórska-Żurek, *Dopuszczalność przetwarzania danych osobowych w wykonaniu umowy przelewu wierzytelności konsumenckiej*, "Monitor Prawniczy" 2005, no. 14, pp. 698–699. Cf. J. Pokrzywniak, *Klauzula zezwalająca na przeniesienie praw i obowiązków z umowy*, "Monitor Prawniczy" 2004, no. 24, p. 1 ff.; R. Trzaskowski, *Dopuszczalność przelewu wierzytelności bez zgody konsumenta-dłużnika*, "Palestra" 2009, no. 5–6, p. 244 ff.

[12] As in W.J. Katner, *op. cit.*, p. 44; M. Jasiakiewicz, *Wokół dopuszczalności cesji niektórych wierzytelności konsumenckich*, "Przegląd Prawa Handlowego" 2005, no. 8, p. 20.

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this provision, the legislature used the conjunction "and" in the phrase "transfer of rights and obligations arising from the contract".

This interpretation is also supported by systemic interpretation of Article 385^3 (5) CC made with the account of Article 385^1 § 1 first sentence CC. Assuming that Article 385^3 (5) CC concerns solely the transfer of the entirety of rights and obligations of the consumer's counterparty is due to the fact that the analogous wording referring to the rights and obligations of the consumer, which constitute the designatum of the concept of "prohibited contractual terms", must be understood in the same way (Article 385^1 § 1 first sentence CC). As a consequence, only a term that has not been individually agreed with the consumer and which determines all of their rights and obligations in a manner contrary to good morals, grossly violating the consumer's interests, should be considered an abusive clause.

Another argument is provided by the systemic and teleological interpretation of Article 385^3 (5) CC, taking into account both the general rules concerning the assignment of contract and the transfer of individual, some or all of the rights or obligations of the party, as well as the content of Article 385^1 § 1 first sentence CC. The rules relating to the assignment of contract and other acts referred to above apply regardless of whether these acts are performed in professional, semi-professional or non-professional transactions. The purpose of Article 385^1 § 1 first sentence CC is to prohibit the introduction of abusive clauses resulting, i.a., in a gross violation of the consumer's interest through disproportionate positions of the parties, thus guaranteeing the consumer, as the weaker party to the legal relationship, wider protection as compared to other entities functioning within these transactions. This means that Article 385^3 (5) CC cannot be interpreted as a *lex specialis* in relation to the regulations concerning the assignment of contract or the transfer of individual, some, or all rights or obligations, as well as a provision introducing prohibition on performing such acts.[13] It is not intended to introduce exceptions to the general rules. The above also supports the lack of justification for the thesis according to which Article 385^3 (5) CC applies to the transfer of specific, individual or all rights or obligations without the consent of the consumer, using the inference *a maiori ad minus*.[14]

In the context of "abusiveness", it cannot therefore be assumed that since the assignment of contract, carried out by the consumer's counterparty under the

[13] The position, according to which Article 385^3 (5) CC cannot be interpreted as a *lex specialis* in relation to the regulations covering the assignment of receivables has been expressed by B. Krzyżagórska-Żurek (*op. cit.*, p. 698). Differently judgment of the Voivodeship Administrative Court in Warsaw of 3 June 2004, II SA/Wa 225/04, LEX no. 820881. As regards the prohibition on assignment of receivables, see judgment of the Supreme Court of 26 September 2008, V CSK 105/08, LEX no. 512022; B. Krzyżagórska-Żurek, *op. cit.*, p. 697; R. Trzaskowski, *op. cit.*, p. 245.

[14] Cf. B. Krzyżagórska-Żurek, *op. cit.*, pp. 698–699. Differently judgment of the Voivodeship Administrative Court in Warsaw of 3 June 2004, II SA/Wa 225/04, LEX no. 820881.

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general rules specified in Article 519 § 2 (1) CC, requires the consumer's consent, the restriction of the application Article 385^3 (5) CC solely to such an act does not introduce any particular additional protection for the consumer in this respect.

Article 385^3 (5) CC does not introduce any modifications with regard to the special regulations on the "assignment" of contracts that create continuous obligations *in rem*, either. The creation of a relationship of a continuous nature stems from the fact that a particular contract is related to a specific moment, in the sense that it requires the fulfilment of an obligation based on the specific conduct of the party for a certain period of time.[15] Contracts creating so-called obligations *in rem*, on the other hand, include cases where the party's status is determined by the property-law situation in the form of its ownership right or perpetual usufruct of the subject of a specific contract.[16] At the same time, they determine the extended effectiveness of the legal relationship resulting from a given contract. In these cases, the clause on the assignment of contract does not require an individual arrangement with the consumer. Clauses of this type are not classified as abusive contractual terms. In the light of the issues discussed herein, i.e. in the relationship between the entrepreneur and the consumer, such regulations apply in particular within the framework of rental (Article 678 § 1 first sentence CC), lease (Article 678 § 1 first sentence in conjunction with Article 694 CC), finance lease (Article 709^{14} CC) and a contract using the structure of the so-called direct finance lease referred to in Article 709^{18} CC. These provisions entitle the landlord, lessor, financing party and finance lessor, as owners (or possessors under long-term leasehold [perpetual usufruct]), to dispose of the property during the legal relationship in question, which results in the buyer *ex lege* entering this relationship in place of the above-mentioned parties. This means that the transfer of a right *in rem* to another entity causes at the same time the transfer of the debt and the receivables resulting from the contract to the purchaser of this right *in rem*.

The analysis shows that Article 358^3 (5) CC applies only to a clause concerning the assignment of contract without the consumer's consent that has not been individually agreed upon. However, this provision does not cover cases of transfer of a specific, certain or all of the consumer's rights resulting from the contract. The general rules apply here, so these acts do not require the consumer's consent (Articles 509–518 CC). Similarly, it is not necessary to make individual arrangements with the consumer regarding the introduction of a term providing for the assumption of specific, some or all of the contractor's obligations without the consumer's consent, with the proviso that these activities, in turn, require the consumer's express

[15] For more detail on permanent (continued) obligations, see Z. Radwański, *Uwagi o zobowiązaniach trwałych (ciągłych) na tle kodeksu cywilnego*, "Studia Cywilistyczne" 1969, vol. 13–14, pp. 251–263.

[16] Cf. P. Machnikowski, [in:] *System Prawa Prywatnego…*, vol. 5, p. 147.

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consent under general rules (Article 519 § 2 (1) CC) or consumer's participation as a party to the contract on the assignment of debt (including also individual or some obligations), which kind of replaces the consumer's consent (Article 519 § 2 (2) CC).

As a side note, it is worth adding that the above-mentioned general rules may, of course, be modified by individual arrangements between the parties.

If the term on the transfer of the rights and obligations of the contractor resulting from the contract has been individually agreed with the consumer, it does not constitute an abusive clause and it cannot be said to be a transfer made without consumer's consent. Then, if the clause is worded abstractly in such a way that the counterparty is entitled to assign the contract without the consumer's consent, the consumer actually gives his or her consent *ex ante* and *in blanco* to do so. Such consent is supplemented under the terms of Article 512 CC, according to which as long as the seller (entrepreneur) has not notified the debtor (consumer) about the transfer, the performance made to the previous creditor has effect on the purchaser, unless the debtor was aware of the transfer at the time of performance. This provision applies *mutatis mutandis* to other legal acts between the debtor and the previous creditor, and thus also, inter alia, to the assignment of contract. In order to strengthen consumer protection and to have a real influence on the choice of the "new" counterparty, the parties may introduce a term according to which the consumer will be entitled to confirm the assignment of the contract by the "existing" counterparty. It should be assumed in such an event that the consumer gives his consent retroactively (*ex tunc*) – Article 520 CC. In such a case, it is advisable to set a time limit for the consumer to express it. In the absence of any further specification in this respect, in application of Article 520 CC, the expiry of the time limit set will be tantamount to the consumer's refusal to grant consent.[17] Of course, the above solution may be modified by the parties in such a way that the consumer's "silence" will be deemed as the absence of opposition in this respect. That rule may also be modified towards being effective for the future (*ex nunc*), i.e. from the moment of submission of the statement on the consumer's consent.

[17] As a rule, "silence" is not considered as a statement in civil law. As held by, e.g., A. Kidyba, *Prawo handlowe*, Warszawa 2018, p. 788. See also the discussion by Z. Radwański, [in:] *System Prawa Cywilnego…*, vol. 1, pp. 570–573; idem, [in:] *System Prawa Prywatnego*, vol. 2: *Prawo cywilne – część ogólna*, ed. Z. Radwański, Warszawa 2008, pp. 99–104; J. Grykiel, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[11]*, ed. M. Gutowski, Warszawa 2016, p. 389; A. Janiak, [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. A. Kidyba, Warszawa 2012, pp. 381–390; K. Piasecki, [in:] *Kodeks cywilny z komentarzem*, ed. J. Winiarz, vol. 2, Warszawa 1989, p. 66, 75; M. Piekarski, [in:] *Kodeks cywilny. Komentarz*, eds. Z. Resich, J. Ignatowicz, J. Pietrzykowski, J.I. Bielski, vol. 1, Warszawa 1972, pp. 175–176; S. Rudnicki, R. Trzaskowski, [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. J. Gudowski, Warszawa 2014, pp. 554–555; M. Safjan, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[11],* ed. K. Pietrzykowski, Warszawa 2015, pp. 308–309; M. Wojewoda, [in:] *Kodeks cywilny. Część ogólna*, ed. M. Pyziak-Szafnicka, Warszawa 2009, pp. 636–637.

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EFFECTS OF A TRANSFER OF RIGHTS AND OBLIGATIONS FROM THE CONTRACT WITHOUT CONSUMER'S CONSENT

On the basis of Article 385[1] § 1 first sentence CC, a prohibited clause in respect of transferring the rights and obligations of the consumer's counterpart from the contract without the consent of the consumer is not binding on the consumer. This means that in the absence of individual arrangement in this regard, the transfer of such rights or obligations from the contract has no effect. Moreover, the lack of binding force does not affect the effectiveness of the contract as a whole due to the fact that the regulations on consumer contracts do not provide for the possibility of examination under Article 58 § 3 CC whether the parties would have concluded the contract without these terms.[18] In such a case, the parties are bound by the contract in the remaining scope (Article 385[1] § 2 CC). Thus, these provisions introduce a specific sanction in the form of partial ineffectiveness of a legal act, in a sense that is different from the general regulation under Article 58 § 3 CC,[19] according to which if only a part of a legal act is affected by the invalidity, it remains in force with regard to the remaining parts, unless the circumstances show that without the terms affected by the invalidity, the act would not have been performed.

CONCLUSIONS

In the light of Article 358[1] CC, the overriding prerequisites for a term regarding the transfer of rights and obligations of a contracting party without the consumer's consent, as an abusive clause governed in Article 385[3] (5) CC, are the conclusion of a contract with a consumer and the lack of individual arrangements concerning the term concerned.

The clause provided for in Article 385[3] (5) CC applies solely to the assignment of contract made by a contracting party without the consumer's consent. In the absence of individual arrangements in this regard, a fundamental rationale the legislator had in mind when introducing regulations on prohibited contractual clauses was breached, namely the protection of the consumer as the weaker party in a legal relationship against gross infringement of their interests, primarily due to the disproportion in the parties' positions.

Article 385[3] (5) CC does not cover cases of transfer of a specific, some or all of the rights of the consumer's counterparty resulting from the contract. The general rules apply here, so these acts do not require the consumer's consent (Articles

[18] As in, i.a., A. Olejniczak, [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Zobowiązania. Część ogólna*, ed. A. Kidyba, Warszawa 2010, p. 225.

[19] *Ibidem*.

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509–518 CC). Similarly, it is not required to enter into individual arrangements with the consumer regarding the introduction of a term providing for the takeover of a specific or all of the contractor's obligations without the consumer's consent, with the caveat that these actions, under general provisions, require the consumer's explicit consent (Article 519 § 2 (1) CC) or consumer's participation as a party to the contract on the assignment of debt (including also individual or some obligations), which kind of replaces the consumer's consent (Article 519 § 2 (2) CC).

Therefore, the regulation resulting from Article 385^3 (5) CC cannot be interpreted as a *lex specialis* in relation to regulations concerning the assignment of contract or the transfer of individual, some or all rights or obligations of the consumer's counterparty, or as introducing a prohibition on performing such actions. It cannot be considered that, using the inference *a maiori ad minus*, this provision also applies to the transfer of a specific, individual or all rights or obligations without the consent of the consumer.

It also does not lead to modifications with regard to specific regulations concerning the "assignment" of contracts creating continuous obligations *in rem*, where the purchaser enters into the legal relationship *ex lege* in place of a specific party to the contract. This applies in particular to rental (Article 678 § 1 first sentence CC), lease (Article 678 § 1 first sentence in conjunction with Article 694 CC), finance lease (Article 709^{14} CC) and a contract using the structure of the so-called direct finance lease referred to in Article 709^{18} CC. In these cases, the transfer to another entity of a property right to an object simultaneously results in the transfer of the debt and receivables arising from the contract to the purchaser of that right.

The effect of introducing an abusive clause under Article 358^3 (5) CC is a specific sanction in the form of partial ineffectiveness of the legal transaction. In such a case, the parties are bound by the contract in the remaining scope (Article 385^1 § 2 CC), while at the same time Article 58 § 3 CC does not applied. This means that the contract remains in force with regard to the remaining terms without analysing whether there are circumstances which indicate that the transaction would not have been performed "without the terms affected by invalidity.

REFERENCES

Literature

Czachórski W., Brzozowski A., Safjan M., Skowrońska-Bocian E., *Zobowiązania. Zarys wykładu*, Warszawa 2009.

Bednarek M., [in:] *System Prawa Prywatnego*, vol. 5: *Prawo zobowiązań – część ogólna*, ed. K. Osajda, Warszawa 2020.

Drapała P., *Przejęcie długu, przejęcie praw i obowiązków wynikających z umowy (zmiana strony umowy)*, Warszawa 2016.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 12:58:18

Dybowski T., Pyrzyńska A., [in:] *System Prawa Prywatnego*, vol. 5: *Prawo zobowiązań – część ogólna*, ed. K. Osajda, Warszawa 2020.
Grykiel J., [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[11]*, ed. M. Gutowski, Warszawa 2016.
Grzybowski S., [in:] *System Prawa Cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Wrocław 1985.
Janiak A., [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. A. Kidyba, Warszawa 2012.
Jasiakiewicz M., *Wokół dopuszczalności cesji niektórych wierzytelności konsumenckich*, "Przegląd Prawa Handlowego" 2005, no. 8.
Katner W.J., *Cesja niektórych wierzytelności konsumenckich*, "Glosa" 2006, no. 1.
Kidyba A., *Prawo handlowe*, Warszawa 2018.
Klein A., *Elementy zobowiązaniowego stosunku prawnego*, Wrocław 2005.
Krzyżagórska-Żurek B., *Dopuszczalność przetwarzania danych osobowych w wykonaniu umowy przelewu wierzytelności konsumenckiej*, "Monitor Prawniczy" 2005, no. 14.
Litwiński P., *Przelew wierzytelności konsumenckiej a udostępnianie danych osobowych konsumenta*, "Glosa" 2004, no. 13.
Machnikowski P., [in:] *System Prawa Prywatnego*, vol. 5: *Prawo zobowiązań – część ogólna*, ed. K. Osajda, Warszawa 2020.
Olejniczak A., [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Zobowiązania. Część ogólna*, ed. A. Kidyba, Warszawa 2010.
Piasecki K., [in:] *Kodeks cywilny z komentarzem*, ed. J. Winiarz, vol. 2, Warszawa 1989.
Piekarski M., [in:] *Kodeks cywilny. Komentarz*, eds. Z. Resich, J. Ignatowicz, J. Pietrzykowski, J.I. Bielski, vol. 1, Warszawa 1972.
Pokrzywniak J., *Klauzula zezwalająca na przeniesienie praw i obowiązków z umowy*, "Monitor Prawniczy" 2004, no. 24.
Popiołek W., [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[10]*, ed. K. Pietrzykowski, Warszawa 2018.
Radwański Z., [in:] *System Prawa Cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Wrocław 1985.
Radwański Z., [in:] *System Prawa Prywatnego*, vol. 2: *Prawo cywilne – część ogólna*, ed. Z. Radwański, Warszawa 2008.
Radwański Z., *Uwagi o zobowiązaniach trwałych (ciągłych) na tle kodeksu cywilnego*, "Studia Cywilistyczne" 1969, vol. 13–14.
Radwański Z., Olejniczak A., *Zobowiązania – część ogólna*, Warszawa 2016.
Rudnicki S., Trzaskowski R., [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. J. Gudowski, Warszawa 2014.
Safjan M., [in:] *Kodeks cywilny*, vol 1: *Komentarz. Art. 1–449[11],* ed. K. Pietrzykowski, Warszawa 2015.
Trzaskowski R., *Dopuszczalność przelewu wierzytelności bez zgody konsumenta-dłużnika*, "Palestra" 2009, no. 5–6.
Wojewoda M., [in:] *Kodeks cywilny. Część ogólna*, ed. M. Pyziak-Szafnicka, Warszawa 2009.

Legal acts

Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2023, item 1610, as amended).

Case law

Decision of the Supreme Court of 4 August 2023, I CSK 3925/22, LEX no. 3590658.
Judgment of the Court of Appeal in Warsaw of 20 March 2019, VI ACa 1118/17, LEX no. 3029689.
Judgment of the Court of Appeal in Warsaw of 2 December 2019, VII AGa 1379/18, LEX no. 3103356.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 12:58:18

Judgment of the Supreme Administrative Court of 14 April 2015, II FSK 187/13, LEX no. 1710136.
Judgment of the Supreme Administrative Court of 17 August 2016, II FSK 881/14, LEX no. 2142235.
Judgment of the Supreme Court of 6 November 1972, III CRN 266/72, OSNC 1973, no. 9, item 160.
Judgment of the Supreme Court of 26 September 2008, V CSK 105/08, LEX no. 512022.
Judgment of the Supreme Court of 17 May 2012, I CSK 315/11, LEX no. 1226826.
Judgment of the Voivodeship Administrative Court in Warsaw of 3 June 2004, II SA/Wa 225/04, LEX no. 820881.
Judgment of the Voivodeship Administrative Court in Warsaw of 11 February 2015, III SA/Wa 2234/14, LEX no. 1817155.

ABSTRAKT

Celem artykułu jest analiza jednej z klauzul abuzywnych uregulowanych w kodeksie cywilnym. Problematyka postanowień niedozwolonych ma niebagatelne znaczenie z uwagi na to, że związana jest z powszechnie nawiązywanymi w obrocie stosunkami umownymi z podmiotami o statusie konsumenta. Wybrana klauzula została wskazana przez ustawodawcę w art. 385^3 pkt 5 k.c. i odnosi się do przeniesienia praw i obowiązków wynikających z umowy bez zgody konsumenta. Nie została ona dotychczas poddana szczegółowej analizie. Autorka wskazała nadrzędne przesłanki kwalifikacyjne dla postanowienia z art. 385^3 pkt 5 k.c. jako klauzuli abuzywnej w postaci zawarcia umowy z konsumentem oraz braku indywidualnych uzgodnień w jego zakresie. Uznała, że przepis ten dotyczy wyłącznie cesji umowy dokonanej przez kontrahenta bez zgody konsumenta. Natomiast skutkiem wprowadzenia takiej klauzuli abuzywnej do umowy jest specyficzna sankcja, tj. częściowa bezskuteczność czynności prawnej (art. 385^1 § 2 k.c.).

Słowa kluczowe: kodeks cywilny; niedozwolone postanowienia umowne; klauzule abuzywne; przedsiębiorca; konsument