

"The sanction of Abusive Ineffectiveness as a distinct type of defect in legal actions within the regime of consumer relations."

Summary.

The main subject of this doctoral dissertation is the issue of the sanction of the consumer's non-binding nature of an unfair contractual term and its distinctiveness in relation to other types of defects in legal actions known to the pre-accession wording of the Civil Code, which becomes apparent both at the structural level and in the process of eliminating the effects of legal actions burdened with such a defect. The core considerations in the dissertation concern issues such as the specific protective goals of the discussed sanction, its particular subjective and objective scope, the specific rules for reviewing the content of individual provisions and the entire contract, as well as the specific rules for determining the ineffectiveness of part or all of the legal action and the subsequent settlement of the parties to the contract that turned out to be permanently ineffective. The dissertation is focused both on analyzing the discussed issue in the perspective of currently applicable Polish civil law and Directive 93/13, as well as the contemporary state of scientific debate in this area, with particular emphasis on the lack of prevailing agreement regarding the legal nature of the examined sanction and the absence of a uniform doctrinal conceptual framework to describe its operation. The research includes a rich body of case law from the CJEU and the Supreme Court, as well as judgments obtained from personal practice, thus preventing the considerations from being directed solely towards the theoretical domain, without adequate reference to the practice of law application. The substantive considerations regarding the legal nature of the sanction of abusive ineffectiveness were preceded by a historical outline, showing the process of shaping the discussed sanction within Polish and EU law, particularly considering the systemic role of the CJEU in defining the characteristics of the sanction in question. Furthermore, the competitiveness of the sanctioning regimes of Article 58 § 1 and 2 and Article 385¹ § 1 of the Civil Code was analyzed, along with the principles according to which – in the regime of consumer relations – the abusive ineffectiveness takes precedence over the application of the sanction of absolute invalidity. The discussion of the indicated issue utilized the problem of defects in consumer loan agreements indexed to foreign currency exchange rates, which – due to the dynamic case law, especially in the context of the CJEU's judgments concerning Polish consumers, as well as the April 2024 resolution of the full panel of the Civil Chamber of the Supreme Court – became a significant

part of the dissertation, as this issue exhibits significant differences compared to the classical understanding of the scope of the sanction under Article 385¹ § 1 of the Civil Code.