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Summary of doctoral thesis entitled ‘The institution of discharge in Polish private law.’

The fundamental objective of the dissertation entitled ‘The institution of discharge in Polish private law’ is to show the legal instrument referred to in a broad context. The conception of the institution of discharge in Polish private law has not yet been addressed in the subject literature. These considerations were the primary motivation for addressing the present issue.

The dissertation is divided into eight chapters, the first two of which provide a *sui generis* introduction to the analysis of the institution of discharge according to its model, which remains relevant in the field of private law as a whole.

The first chapter discusses the development of the institution of discharge from the time of Roman law until 1937. An argument in favour of a reference all the way back to Roman law is the origin of the Polish word for ‘discharge’, i.e. ‘*absolutorium*’. The primary research task in this regard was to find an answer to the question of whether the institution of discharge in the sense given to it in modern legal language (e.g. in the Commercial Companies Code) was regulated in Roman law. Chapter One also traces the development of the legal regulation of the institution of discharge in European states in the mediaeval and modern periods. The issue to be determined was whether the fall of the Roman Empire marked the end of the legal institution of discharge, or whether it nevertheless survived that momentous event and continued to be transformed. German and Austrian commercial law influenced the development of the regulation of the institution of discharge in Polish law, so the remaining subsections are devoted to the analysis of the institution of discharge in the indicated foreign legal systems. The author’s intention was to understand whether, and if so, how deep are the roots of the Polish private law regulation of the institution of discharge in German and Austrian commercial law. The analysis in this respect starts with the Prussian *Landrecht* of 1794 and ends with the Nazi Joint-Stock Company and Limited Joint-Stock Partnership Act of 1937. As indicated, the author’s aim was to search for the roots of the regulation of the institution of discharge in Polish private law. The Commercial Companies Code did not introduce any key changes as regards the regulation of the institution of discharge in relation to the Commercial Code of 1934. It is true that the cited German act was enacted three years later, but work on it had already begun in 1926, and it may be assumed that the Commercial Law Section and, subsequently, the Subcommittee on Commercial Law of the Codification Commission of the Republic of Poland were familiar with the fruits of the work in progress on the AktG of 1937.

The matter of the development of the institution of discharge in Polish private law from the Second Republic to the present day is subsequently presented. In this chapter, the author undertook three research tasks. The first consisted of an analysis of the evolution of the regulatory core of the discharge institution in Polish private law. This is because the knowledge of how it developed influences the accuracy of the theses made in relation to the current regulations. The core was, and still is, formed by cooperative law, commercial company law, and the law of ownership of premises. The second task was to discuss the issue of the institution of discharge as a subject of soft law and contractual provisions. The final research task was to present trends in the regulation of the institution of discharge in private law. This was done against the background of the draft European Model Company Act 2017.

The third chapter attempts to present the model of the discharge institution in terms of its statutory regulations. To this end, the elements that construct this model were selected and then discussed. This included terminological issues relating to the institution of discharge, its legal objectives, the subject-matter of the discharge decision, the basis and freedom of the discharge decision, the discharge procedure, the legal forms of discharge decisions, their content, their justification, and the protection of the rights of persons involved in the discharge decision. The matter of this chapter has been covered synthetically. It is developed in the following chapters.

The subsequent fourth chapter deals with the subjective side of the discharge decision. It should be made clear that the analysis in this regard does not cover the issue of addressing the discharge resolution, i.e. including in its content persons assessed individually, collectively, as a group, or *in corpore*. Indeed, these issues have become the subject of argument in Chapter VII. The primary research task of Chapter IV was to identify as fully as possible the circle of those being discharged (those being assessed) covered by the statutory discharge obligation as well as the circle of those who grant discharge (assessors). The analysis is based on the assumption that the assessors are individual, broadly defined organizational units (e.g. limited liability companies), which act through their bodies in the field of discharge (Article 38 of the Civil Code). Attention is also given to the issue of the assessed and the assessor as a subject of civil law, which was of particular relevance for those discharged. This is because they are not always natural persons. It is also not obvious that the statutory circle of the assessed does not include only members of the competent bodies. This required a discussion of the matter of the discharged in terms of the theory of bodies and representation. A secondary, yet interesting research task was to analyse the matter of the contractual formation of the circle of persons acting at the level of the discharge decision.

Chapter five addresses the matter of the basis for the discharge decision. Two 'dimensions' have been put under consideration: objective (the manner in which the duties are performed) and temporal (the period in which they are performed). The subsequent issues examined in this chapter relate to the conclusions presented against the background of the objective and temporal scope of the discharge basis. Among other things, the question had to be answered as to whether the discharging officer decides on the discharge only in respect of the performance of the whole of the duties over a certain period of time, or whether this can also be done in respect of parts of them (partial discharge). The deductions made in the following subsections 'moved' the research on the matter of the basis for the discharge decision to a more practical level. Indeed, it is one thing to indicate in general terms that the assessor decides on the discharge of duties in a specific period of time, but it is another to draw attention to the information constituting the 'basis' for the decision in question. The analysis of the statutory matter concludes with comments on the assessor's discretion in reaching a discharge decision. Following the pattern set in the previous chapter, chapter five concludes the reasoning on the contractual regulation of the discharge basis.

The discharge procedure, or more precisely its basic elements, are then discussed. It should be made clear that the term 'discharge procedure' is only a mental abbreviation, as the legislator did not regulate a procedure dedicated solely to the institution of discharge. The elements mentioned at the outset include, firstly, the matter of the body through which the assessor acts in the context of the discharge institution, and the actions of this body within and outside the meeting, in ordinary and extraordinary 'mode', and with or without a quorum. In the first instance, therefore, the emphasis is on the 'body.' The '*leitmotif*' of the second group of issues analysed is the right to vote and its exercise as regards the institution of discharge (the required majority, the obligation to order a secret ballot and the exceptions thereto, as well as cases of exclusion from voting). The next matter discussed is the entitlements of those discharged when their mandates expire. The analysis of the statutory issues ends with the timing of the discharge decision, followed by a discussion of the contractual regulation of the discharge procedure.

Chapter seven, to some extent, is a synthesis of the preceding considerations. This is because it concentrates on the discharge resolution, starting the presentation from the construction of the resolution. In this approach, the matter of the ways in which it is addressed (individual discharge and other constructions), its material and temporal scope, the settlement options included in its content and its justification are analysed. Subsequently, the possibility of a negative and non-existent resolution on the discharge is considered, as well as its

qualification as a legal act. The second research task undertaken in this chapter was to discuss the matter of challenging the discharge resolution and, on this occasion, also other means of protecting the rights of persons present at the level of the discharge decision. The chapter, in accordance with the *modus operandi* already established, concludes with comments on contractual provisions, the implementation of which may influence the construction (shaping of the content) of the discharge resolution.

The final, eighth, chapter is devoted to the legal consequences of taking a settlement on discharge. It should be clarified that the author refers to the concept of 'settlement' and not 'resolution' intentionally, aiming to cover all legal vehicles of the institution of discharge in Polish private law. The starting point for the considerations throughout the chapter is the conclusions drawn from an analysis of the concept of 'obtaining a discharge' from the 1920 Cooperative Law Bill and its contemporary legal meaning. The author goes on to present the matter of discharge facts as determinants of the scope of the impact of the legal effects of the discharge decision taken, whereas the 'triad' of general issues is concluded by the matter of the non-occurrence and expiry of the legal effects of the decision in question. The next three subsections, with the exception of the issues relating to the personal rights of the assessed person, are devoted to the impact of the discharge decision on the sphere of the legal liability of the assessed person towards the assessor. Civil and organizational liability has been primarily considered. The considerations with regard to the discharged person's criminal liability and his/her other liability of a public law nature are complementary. The analysis in this chapter concludes with the comments made on the further implications of the discharge decision and the contractual regulation of its legal consequences.

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