

Evidence against the document's wording and interpretation of declarations of will

INTRODUCTION

The Polish legislator established certain limitations regarding the admissibility of personal evidence on circumstances related to the content of a document. Pursuant to Article 247 of the Code of Civil Procedure, evidence from witnesses or from hearing the parties is inadmissible between the participants in a given legal action if it is to be directed 'against the wording' or 'over the wording' of a document covering the action for which a form is reserved under pain of invalidity, if this would lead to the circumvention of this restriction unless the court deems it necessary due to the particular circumstances of the case.

At the same time, however, the said 'wording of the document', i.e. its content, is subject to interpretation of declarations of will in accordance with the provisions of substantive law, i.e. Article 65 of the Civil Code. In turn, according to this regulation, when interpreting declarations of will, one should refer to extra-normative rules, which include:

- (i) the circumstances in which the declaration of will was given,
- (ii) principles of social co-existence (a general clause typical of Polish substantive civil law referring to generally accepted moral norms in society regarding life in society) and,
- (iii) established customs.

In the case of an action between two or more parties, the will of the parties, and not the literal content of the document, must be the primary consideration (Article 65 § 2 of the Civil Code).

Thus, a certain contradiction arises here, as Article 247 of the Code of Civil Procedure prescribes - in cases of legal actions performed in a form reserved under pain of invalidity - to focus exclusively on the content of documents, whilst Article 65 of the Civil Code refers, when determining the actual content of declarations of intent contained in a document, to other evidence, in particular indicating circumstances not resulting from the content of the document. In practice, this usually boils down to the taking of evidence from the hearing of witnesses or testimony of the parties, who try to prove what the parties understood by a given declaration of will, what their consensual aim and intention were when performing a given legal action, as well as what accompanying events determined the literal content of the document.

In the following, we provide a brief commentary on the interrelation of the referenced provisions and the rules developed in judicature and civil law doctrine for resolving the conflict between these two.

EVIDENCE AGAINST OR ABOVE THE WORDING OF A DOCUMENT

For further considerations, it is crucial to clarify what the said 'wording' of a document within the meaning of Article 247 of the Code of Civil Procedure is, for it is evidence 'above the wording' or 'against' it that is not admissible. Pursuant to the judgment of the Polish Supreme Court of 7.01.1998 (ref. III CKN 307/97), the wording of a document is its content, covered by declarations of will made by the parties to a particular legal action. In other words, the 'wording of the document' is that part of the document which covers the key elements of the given legal action and determines its shape, i.e. the essence of the given action.

In view of the above, it should be pointed out that evidence 'above the wording of the document' is evidence intended to show that the content of the legal action also includes declarations of will not covered by the content of the document. Evidence 'against the wording of a document', on the other hand, aims at proving that the substance of the declarations of will made by the parties to a given legal action was directly contrary to the content of their declarations, which were included in the content of the document.

At the same time, it should be noted that Article 247 of the Code of Civil Procedure is applicable only to those legal actions for which a given form has been restricted under pain of invalidity. Pursuant to Article 73 of the Civil Code, a legal action is invalid only if the Act explicitly provides for such a rigour. Thus, if a given action did not require a specific form (e.g. a notarial deed) for its effective performance, and it was included therein solely by the will of the parties, Article 247 of the Code of Civil Procedure will not apply, which means that evidence from the hearing of witnesses and parties may be conducted in a case concerning this action without any limitations.

DIRECTIVES FOR THE APPLICATION OF ARTICLE 247 OF THE CODE OF CIVIL PROCEDURE

There is no consensus in Polish civil procedure law doctrine on how broadly the evidentiary limitations arising from Article 247 of the Code of Civil Procedure extend. In particular, the subject of the dispute is whether it is permissible to prove the existence of contractual provisions which form part of a legal action executed in a special form under pain of invalidity, but which do not constitute provisions which are material to the legal action in question (Latin: *accidentalalia negotii*) and at the same time are not covered by the document incorporating the legal action.

In the light of the first, liberal view, the prohibition of evidence referred to in Article 247 of the Code of Civil Procedure covers only provisions which are essential for a given type of legal action. Thus, if the evidence is intended to show that, in addition to the contractual provisions indicated in the document, it was the parties' consensual, although not covered by the content of the document, intention to introduce other, side issues, their content may be proved by personal evidence. Primacy is therefore assigned to the principle of examining the consensual intention of the parties to a legal action within the meaning of Article 65 of the Civil Code, and evidentiary limitations apply only to narrowly construed 'materially relevant' provisions (Latin: *essentialia negotii*).

In opposition to the above, a far more restrictive view is presented, according to which the content of the entire legal transaction - both in terms of 'essentialia' and 'accidentalalia' negotii - is covered by the evidentiary limitations of Article 247 of the Code of Civil Procedure, if, as a rule, a special form under pain of invalidity is required for this transaction. There is, therefore, no distinction between essential and nonessential elements, as the entire action is treated consistently.

POSITION OF THE JUDICATURE

Judicial jurisprudence, in particular that of the Supreme Court, seems to advocate a liberal approach in the decisive majority (e.g. judgments of the Supreme Court of 27 April 2004, ref. II CK 191/03; of 8 March 2005, ref. IV CK 630/04; of 13 April 2005, ref. IV CK 684/04; of 2 July 2009, ref. V CSK 4/09, unpublished; of 8.03.2005, ref. IV CK 630/04; of 6.12.2017, ref. I CSK 476/17). The cited judgments indicate that the evidentiary limitations of Article 247 of the Code of Civil Procedure relate, as a rule, to the essentialia negotii of a particular legal action and that the collateral circumstances (additional elements) may already be proved by means of a full range of evidence.

The Supreme Court also confirms that Article 247 of the Code of Civil Procedure does not prevent the proving by means of witness and party hearings concerning facts not reflected in the document if this would serve to clarify the content of the declarations of will expressed therein. Such interpretation should, however, only apply to provisions that raise genuine and serious doubts, and not seek to determine a meaning different from what is clearly stated in the document (e.g. judgment of the Supreme Court of 28.4.1998, ref. II CKN 724/97).

INVALIDITY OF AN ACT AND DEFECTS IN DECLARATIONS OF WILL AND THE EVIDENTIARY PROHIBITION OF ARTICLE 247 OF THE CODE OF CIVIL PROCEDURE

A different issue is the matter of the application of the evidentiary limitations of Article 247 of the Code of Civil Procedure when proving the occurrence of the invalidity of a legal act or defects in declarations of intent in its performance.

In this respect, the Supreme Court consistently accepts that facts of this kind may be proved in any way, and therefore, Article 247 of the Code of Civil Procedure is not applicable here. This refers to both the ostensibility of the contract, the occurrence of an error or deception, as well as other circumstances indicating the invalidity of the legal act (there, inter alia, the Supreme Court Resolution (7) of 21.07.1954, ref. I CO 22/54; the Supreme Court Judgment of 18.03.1966, ref. II CR 123/66; the Supreme Court in its ruling of 13.11.1973, ref. I CR 678/73).

The main argument in support of the above position is that the symptoms of defects in the declaration of will are usually not to be found in the content of the document itself, which covers the content of the legal act, but concern the volitional sphere, which manifests in circumstances external to the document itself. Similarly, it is the external facts that usually indicate the invalidity of the legal act and not the content itself. Furthermore, defects in the declaration of intent cannot - in the light of the predominant view - be considered on the same level as the wording of the document, which is merely the content of the document in question, which belongs to the factual and not the motivational sphere. A similar approach is taken by the doctrine to evidence proceedings aimed at proving the circumstances causing the invalidity of a legal action (e.g., T. Ereciński).

CONCLUSIONS

In the light of the above, it should be stated that the collision, indicated at the beginning, between the evidentiary limitations of Article 247 of the Code of Civil Procedure and the principle of primacy of the actual will of the parties while interpreting declarations of will of Article 65 of the Civil Code is resolved quite liberally by the courts.

This is because evidentiary limitations are usually applied only to the extent to which the evidence is to relate to substantively significant elements of a given legal action, which - under pain of invalidity - had to be made in a specific form. This is justified, as the legislator consciously requires that such key elements are clearly and precisely described. On the other hand, any other circumstances, such as additional stipulations by the parties or facts confirming that there were defects in the declaration of will or prerequisites for the invalidity of the legal action in a given case, may be proved without limitation.

In practice, the parties usually adduce evidence from witnesses and parties on very broad facts, which in fact also include the 'wording' of the document. Occasionally, courts may not admit such evidence or limit it, e.g. by waiving questions that would be contrary to the norm of Article 247 of the Code of Civil Procedure. This is more often the case if the other party raises such an objection during the hearing (or already in response to a request for evidence), and therefore, an initiative on the part of the trial attorney may be advisable in this context. However, a properly formulated thesis of evidence usually allows for the taking of evidence of all or the great majority of facts related to the legal action covered by the document indicated in Article 247 of the Code of Civil Procedure.

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