

INTRODUCTION

The concept of continuous obligation, or a similar construct, is used in many legal systems. However, it is rarely the subject of general statutory regulation, or of doctrinal considerations conducted in a systematic manner. The specific nature of obligations whose structure involves the element of time is widely recognised, but as yet no uniform conception has been developed.

The monograph contains a description of continuous obligation in the Polish civil law system. Reference to views expressed on the basis of other legal systems is made only to the extent necessary for achieving the adopted research objective, namely, a description of continuous obligation from a theoretical perspective. The choice of this research method is justified, firstly, by the current state of development of the construct under analysis. The lack of general regulations or, at best, their narrow scope, entails that the basis for reconstructing the essence of continuous obligation is primarily specific regulations. Their analysis requires that extensive research be conducted within individual legal systems. Secondly, one of the achievements of the Polish legal system was the introduction of a general regulation concerning continuous obligation as early as 1933 (see, in particular, Article 272 of the Code of Obligations). Thus, important issues concerning this legal construct were decided on almost ninety years ago. This established a basis for particular types of continuous obligation to be regulated, through the consideration of more common general assumptions.

Due to the limited scope of this publication, the analysis and considerations focus on four fundamental issues: (1) the essence of continuous obligation; (2) the possibility of distinguishing certain general types or models of continuous obligation, and then of identifying specific types of continuous obligation within the general framework; (3) the duration of continuous obligation; and (4) the termination of continuous obligation as an institution particularly suited to the expiration of a obligational relationship of a continuous nature.

The first chapter is devoted to an analysis of the essence of continuous obligation. Throughout the monograph, in accordance with the prevailing position adopted in Polish scholarship, the element of performance is considered to be

the sole, independent criterion for distinguishing this category of obligations. The amount of the performance is determined by taking the time factor into account. This leads to the conclusion that a continuous obligational relationship is an obligation in which at least one of the parties is obliged to provide continuous performance, periodical performance or successive performance, regardless of the source of this obligation (a law or a legal action). This conception makes it possible to assume that the time factor is a constitutive element for the category of obligations under consideration. It may affect both the level of specific performance (continuous and periodical performance) and the overall amount of the performance due under the obligational relationship (periodical and successive performance).

The second chapter addresses the issue of types of continuous obligation. The analysis of the Polish civil law system justifies the conclusion that continuous obligation does not constitute a uniform category. For this reason, the study distinguishes four types (general models) of continuous obligation: (1) a model distinguished by the source of the obligational relationship; (2) a model distinguished by the type of performance constituting an element of this relationship; (3) a model distinguished by the self-executing (independent) or non-self-executing (dependent) nature of the continuous obligation; and (4) a model distinguished by the method of determining the duration of the obligational relationship.

Within the above types (general models), the study attempts to make further distinctions between specific types of continuous obligation. In the case of the first model, this concerns distinguishing between the category of continuous obligations arising from legal acts (primarily from contracts) and the category of continuous obligations established by law (*ex lege*). Under the second model, a number of types of continuous obligation are distinguished according to the criterion of the type of performance (continuous performance, periodical performance, successive performance, taking into account the possible inclusion of one-off continuous performance in the construct of continuous obligation) and a subjective criterion (taking into account which party is the debtor, and which type of performance this party is obliged to provide, including whether the performance is divisible). Under the third model, the monograph proposes distinguishing two types of continuous obligation: continuous obligations of a self-executing (independent) or non-self-executing (dependent) nature. In the case of the fourth model, on the other hand, it is proposed that two types of continuous obligation should be distinguished: continuous obligations whose duration is determined directly (obligations of a non-fixed term and obligations with fixed terms), and continuous obligations whose duration is determined indirectly.

The third chapter of this monograph is devoted to one of the most important issues concerning continuous obligation, i.e. the duration of this legal relationship.

The conducted research justifies first distinguishing two general mechanisms for the expiration of a continuous obligation: a mechanism with a primary (main) function and a mechanism with an ancillary function. Reference to the basic (main) mechanism makes it possible to qualify a continuous obligation according to the criterion of duration, while in the case of a continuous obligation resulting from a legal act it is also possible to verify the content of the legal act in terms of respect for the principle of freedom (the principle of the limited duration of an obligational relationship). The reference to the mechanism of an ancillary nature, on the other hand, makes it possible to take into account the specificity of a given (type of) obligational relationship being binding in terms of time. The proposed distinction between expiration mechanisms may also apply to other obligations than continuous ones.

This is followed by a proposal to describe the duration of continuous obligations by means of two methods. The first involves the use of the constructs of a non-fixed term and fixed term, i.e. the determination of a precise expiration mechanism at the time the obligation is established. In the present monograph, this method is referred to as direct determination of the duration of a continuous obligation. The second method consists in determining the duration of a continuous obligation in relation to the duration of a specific situation, including the duration of another legal relationship or the occurrence of a random event. The specification of the expiry mechanism in this case takes place during the duration of the continuous obligation. This method is referred to in the study as indirect determination of the duration of a continuous obligation.

The third chapter also discusses the division of continuous obligations with regard to the criterion of terminability and non-terminability. The results of the research suggest that a continuous obligation concluded for a non-fixed term is an obligation where the basic (main) expiration mechanism is termination, which is, in principle, free for each party. A continuous obligation concluded for a fixed term is, on the other hand, an obligation where the basic (main) expiration mechanism for termination is linked to the occurrence of a fixed event, which, in principle, is the expiry of a deadline.

The last, fourth chapter of the monograph addresses the issue of the termination of continuous obligations. More detailed discussion of this issue is justified by the special function that the institution of termination fulfils in determining the duration of a continuous obligation. This concerns in particular a continuous obligation of a non-fixed term. In this case, a lack of the ability to terminate could lead to the creation of a perpetual obligation, which would be incompatible with the principle of freedom.

The considerations contained in this chapter relate, among other things, to the classification of termination as a legal act, the person entitled to make a declaration of termination, the issue of the grounds for termination, the differentia-

tion of the legal situation of the parties with respect to the right to terminate, the interpretation of the declaration of intent to terminate, the effect of termination, and, lastly, the invalidity of termination.

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