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COMPARATIVE ANALYSIS OF MECHANISM OF ABSTRACT CONTROL OF CONSUMER CONTRACT TERMS IN THE LIGHT OF THE IMPLEMENTATION OF EUROPEAN UNION DIRECTIVE 93/13/EEC.

There is no doubt that market economy substance is nowadays based upon the fundamental freedom of contract principle. It's generally accepted that parties to the contract can freely construct their mutual obligations and rights, and if they really agree the terms, they should comply with them and cannot exempt themselves from the liability for the noncompliance with the contract. On the other side of the coin, the above stated principle is not absolute one, and there are several circumstances when it is essentially limited. The situation when this absolute rule is skewed relates for example to consumer and sellers and suppliers relation. As a matter of fact consumer protection measures are commonly adopted in the majority of current countries in the purpose of restoring the contractual balance between weaker and definitely stronger market participants.

In 1993 EU authorities adopted the directive 93/13/EEC the purpose of which was to lay the foundations for creation of internal market, with free circulation of goods, services, capital, and persons. Having regard to the fact that currently Member States regulated consumer protection independently, EU decided to set out common regulation in that specific area. As to the content of the directive it should be denoted that art. 3 of the said act ought to be considered as crucial one for understanding when terms of the contract concluded with the consumer could be regarded as unfair. Pursuant to that article 'a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer'. Apart from indication of above criteria, directive stipulated also that Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer. It should be noticed, that EU act regulated not only the issue of consumer protection, but also law of obligations (private law branch) by determining the substantial modification of the contractual duties on consumers' side. According to art. 4 of Treaty of functioning of European Union, EU is not vested with the competence to regulate private law of Member States. However, the most controversial issue concerns the way of implementation the directive in the light of art. 7 that lays down that adequate and effective means should be adopted to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. Imprecise expression concerning the means that should be

adopted gave rise to substantive diversity related to legal instruments created to incarnate above stated idea. In Poland has been introduced a specific procedure the aim of which is to consider the contract terms to be prohibited. That procedure is conducted only by one court – Consumer and Competition Protection Court located in Warsaw. Consumer that potentially could conclude the contract with the seller or supplier or consumer protection organization can file the lawsuit against that party in that specific proceeding. Subsequently, contract term that is recognized by court as prohibited (unfair) is not binding on all consumers that concluded or will conclude the contract with that party. Such extensive power of the ruling commence at the time of publication of the said term in the special register of prohibited clauses. What is more, according to predominant part of the judicature and doctrine such ruling is also binding on each seller and supplier. As a matter of fact, this thesis leads to the conclusion that the verdicts of that court determine the rights and obligations of every market participants. There are number of doubts as to the constitutionality of that regulation and substantive impact of common law on polish legal system. It is commonly believed, that Polish legislature adopted the most repressive measures against sellers and suppliers among the EU Member States in the light of directive 93/13/EEC implementation. The comparable means were adopted in Spain, but the respective court may declare that the verdict will effect on other parties than those involved in conflict. It is interesting that notaries are obligated in Spain not to authenticate the contracts which contain the terms enclosed in the register. By contrast, in France there is no extensive power of the court ruling, but State Council can enact the decree providing for the terms absolutely prohibited. However, those terms are recognized as prohibited with particular caution. On the other hand, in Germany there is no legal possibility to declare the term as publicly forbidden. To summarize, mechanism of abstract control of abusive clauses varies substantially in EU Member States.

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THE PHENOMENON OF PENAL POPULISM IN POLAND

Our lecture's purpose is to show the phenomenon of penal populism and negative consequences of law changes implemented under the influence of this trend. Our case study is Poland. Criminal law is an area of law particularly exposed to political manipulation aiming at gain electorate, instead of fulfilling duties it should serve. In society, law itself is identified neither with administrative nor with civil, but with criminal law. Moreover, this picture is being popularized by public media, because in the context of law the most is being said about crimes and repressive function of law connected with changes in Code of Petty Offences or criminal courts sentences.

For those reasons the majority of people consider protection and administering justice as the fundamental functions of law, because they ensure the sense of security, which is one of the basic human needs situated at the bottom of Maslow's hierarchy of needs. In common opinion discerning politicians are rigorous legislators. This socio-legal mechanism is often used, to this point, that it became a subject of description for criminal law specialists and law sociologists from all over the world and was called penal populism. The term was created by criminal law specialist J. Pratt.

As professor M. Filar noticed, this mechanism divides into four stages.

1. A spectacular case of crime violating a precious good, for example health or freedom of expression, is being seized upon by the media. Usually the issue exists for a long time as pedophilia or cruelty to animals.

2. It results in politicians' decisions to implement a change in criminal law allowing to intensify the protection of that good, often by increasing the maximum penalty or creating a new type of prohibited act within an existing one. Arising projects of amendments to criminal rules lead to redundant casuistry.

3. During the discussions on the draft media are publicizing different cases of similar crimes, while politicians are exaggerating the problem. The social message is as follows: those changes are necessary and justified.

4. Subsequently a project reaches the Marshall of the Parliament and during voting process is supported by the majority due to the high risk of losing electoral votes. It should be mentioned that this campaign is often accompanied by a politi-