

The public policy clause as the general clause in commercial arbitration in the Polish law in the context of the principles of social coexistence

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Summary: 1. Preliminary remarks. 2. The public policy clause as the general clause. 3. The nature of general clauses. 4. The uniqueness of the public order clause within general clauses. 5. The general clause of the rules of social coexistence. 6. The public order clause in the substantive civil law. 7. Conclusion.

Abstract: This article is attempting to aid in defining the concept of public policy clause and its meaning in the commercial arbitration in the Polish law. Complete understanding of a particular legal institution is usually possible by delimiting it from other similar legal categories. The issue of general clauses is, on the one hand, one of the issues inherent in the substantive civil law and, on the other hand, in the notion and meaning of the public policy clause in the commercial arbitration. The works of legal academics present various theoretical approaches to the nature of general clauses. It is proper to start the attempt at defining the exceptional general clause – that of public policy – with examining the norms of civil law, which particularly oftentimes refer to other general clauses, including the principles of social coexistence, which has major place in Polish legal system.

Keywords: material and procedural public policy, arbitration, arbitral tribunal, arbitral rules, contract law, company law.

1. Preliminary remarks

This article is attempting to aid in defining the concept of the public policy clause and its meaning in the commercial arbitration in the Polish law. Complete understanding of a particular legal institution is usually possible by delimiting it from other similar legal categories. The issue of general clauses is, on the one hand, one of the issues inherent in the substantive civil law and, on the other hand, in the notion and meaning of the public policy clause in the commercial arbitration. The works of legal academics present various theoretical approaches to the nature of general clauses. It is proper to start the attempt at defining the exceptional general clause – that of public policy – with examining the norms of civil law, which particularly oftentimes refer to other general clauses, including the principles of social

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coexistence, which has major place in Polish legal system. To define the notion of the public policy clause and to give its content in the commercial arbitration in the Polish law (and thus in a trial), it is impossible not to refer to a separate branch of law connected with it – the substantive civil law. One of the issues inherently related to the concept and content of the public policy clause in the commercial arbitration and to the substantive civil law is the issue of general clauses². One of the main discussion about the meaning of the public policy clause in the Polish commercial arbitration in the jurisprudence and the legal doctrine as well, is about its connection with the general clause of the principles of social coexistence, which is commonly used by Polish legislator in many legal acts, for example the Polish Civil Code³.

2. The public policy clause as the general clause

The doctrine qualifies the public policy clause within the group of norms referred to as general clauses⁴. Their *ratio legis* is to leave the considerable discretion to the body applying the law in order to enable the appropriate reaction of the state even in situations that cannot be predicted on the basis of equity criteria⁵. This is in harmony with the Roman proverb *Ad ea, quae frequentius accidunt, iura adaptantur* (Laws are adapted to those cases that occur very often). Thus, it is necessary to make this concept more specific in the judicial practice by the court in each individual case⁶. The very nature of the general clauses results in their vague nature, which gives a certain discretion to the body applying the law.

In case-law, this issue is also not in doubt. The Polish Supreme Court (hereinafter as the Supreme Court) in its judgment of 16 February 2011⁷ stated that the clause of: "(...) *ordre public* (public policy) is a general clause and as such is conceptually open, and the explanation of its content is left to the court adjudicating in a given case".

In the same year, the District Court in Warsaw, in its decision of 12th August 2011⁸, ruled that the clause "... of legal order, as every general clause, is undefined, which leaves the discretion (discretion) to the court deciding in a particular case". The view that the public order clause was included in the general clauses, as well as its imprecision and thus discretion, was maintained by the Supreme Court, which in its judgment of 9th March 2012⁹, stated that in "... literature was aptly raised that the public policy clause, like every general clause, is undefined, which leaves the court adjudicating in a particular case highly discretionary ..."¹⁰.

The public order clause is a general clause that protects state interests related to the sovereignty of the state, since public order is the concept expressing the general outline of legally protected values¹¹. The limit of freedom of arbitration is limited by

² RYSZKOWSKI, K., "Klauzula porządku publicznego jako klauzula generalna w arbitrażu handlowym w prawie polskim", "Przegląd Prawa Handlowego", 2014, No.3, p. 17.

³ Act of 23rd April 1964 - Civil Code (Journal of Laws No. 16, item 93, as amended).

⁴ BŁASZCZAK, Ł., "Kontrola orzeczenia arbitrażowego ze szczególnym uwzględnieniem klauzuli porządku publicznego", "ADR. Arbitraż i Mediacja" 2008, No. 3, p. 12.

⁵ RYCKO, N., "Stosowanie klauzuli porządku publicznego przez Polski Sąd Państwowy w sprawach dotyczących arbitrażu", BECZEK W. (ed.), *Prace laureatów konkursu na najlepszą pracę magisterską dotyczącą problemów sądownictwa polubownego i mediacji im. prof. dr. hab. Jerzego Jakubowskiego. Edycja piąta*, Warszawa 2012, p. 210.

More about the equity in the commercial arbitration see RYSZKOWSKI, K., "Adjudication on principles of equity in the proceedings before the arbitral tribunal in the Polish law compared to other legal systems", "Cadernos de Dereito Actual", No 12 (2019), p. 09-19.

⁶ RYSZKOWSKI, K., *Klauzula procesowego porządku publicznego w arbitrażu handlowym w prawie polskim na tle innych systemów prawnych*, Warszawa, 2019, p. 54.

⁷ Judgment of the Supreme Court of 16th February 2011 (II CSK 425/10), LEX No. 1027168.

⁸ VII Co 300/10.

⁹ I CSK 312/11.

¹⁰ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 54.

¹¹ BŁASZCZAK, Ł., LUDWIK, M., *Sądownictwo polubowne (arbitraż)*, Warszawa 2007, p. 282.

this legal institution¹², which also limits the autonomy of the parties¹³. Due to its indeterminacy, it leaves considerable discretion to the case-law¹⁴, to which the concept is embodied. Due to the existing diversity, all foreign solutions are not acceptable *en bloc*, without a defense measure, which is the non-eliminated public policy clause¹⁵. There should be pointed out the pejorative relationship which, despite the professionalism of arbitration, has a chance of occurring. Because greater freedom is encumbered with a greater possibility of error by the arbitral tribunal¹⁶.

3. The nature of general clauses

A characteristic aspect of the general clauses is their linguistic aspect, because they are formulated in regulations through indefinite phrases, such as: "good faith", "good morals", or a flagship example of the "principles of social coexistence" invaluable in civilism. Due to the wide set of designations, defining their ranges is *a priori* impossible. It seems more accurate to say that each general clause has a certain semantic intuition, thanks to which one can assess the need to apply a particular clause in a given factual state¹⁷.

The doctrine presents various theoretical approaches to the nature of general clauses. According to *M. Pilich*, in relation to the public order clause, there is an adequate consideration of two of them, namely the general clause as a norm which refers to a set of other norms or assessments or as a norm which requires the assessment to be formulated by the adjudicating body in the light of the specific circumstances of a given case¹⁸.

According to the first concept, general clauses, and in particular the public policy clause, refer to non-legal norms, including political, cultural and moral ones¹⁹. Thus, general clauses enrich legal norms with additional criteria of a non-legal nature: moral, ethical or equity²⁰.

The second concept contradicts the referring nature of general clauses, justifying such a claim based on the false supposition of the existence of a systematic, non-legal set of assessments or norms. Proponents of this view maintain that the general clauses warrant self-assessment by the adjudicating body²¹.

Personally, in the context of all general clauses I support the second view, because it is the view that has been adopted in the practice and it is also intuitively correct.

4. The uniqueness of the public order clause within general clauses

The uniqueness of the public policy clause is indicated, among others, by its dissimilarity with the other general clauses, which means that both of the above-mentioned approaches cannot be considered mutually exclusive on its basis²².

¹² KNAWA, W., "Granice swobody w stosowaniu prawa w postępowaniu przed sądami arbitrażowymi", https://www.kkg.pl/wp-content/uploads/2015/02/14_2008_PDF_PL.pdf

¹³ ŁASZCZUK, M., SZPARA, J., *System Prawa Handlowego, Arbitraż Handlowy, Tom 8*, SZUMAŃSKI, A., (ed.), Warszawa, 2015, p. 707.

¹⁴ PIASECKI, K., *Kodeks postępowania cywilnego. Komentarz, t. 3: Komentarz do artykułów 1096–1217 k.p.c. oraz aktów prawnych UE regulujących międzynarodowe postępowanie cywilne*, PIASECKI K., (ed.), Warszawa 2007, p. 158.

¹⁵ PIASECKI, K., "Skuteczność i wykonalność w Polsce zagranicznych cywilnych orzeczeń sądowych", Warszawa 1990, p. 92.

¹⁶ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 55.

¹⁷ RYCKO, N., *op. cit.*, p. 210.

¹⁸ PILICH, M., "Klauzula porządku publicznego w postępowaniu o uznanie i wykonanie zagranicznego orzeczenia arbitrażowego", "Kwartalnik Prawa Prywatnego" 2003, No. 1, p. 187.

¹⁹ PILICH, M., *op. cit.*, p. 168.

²⁰ RYCKO, N., *op. cit.*, p. 211.

²¹ RYCKO, N., *op. cit.*, p. 211.

²² RYCKO, N., *op. cit.*, p. 211.

The clause "(...) of public policy referring to the values" on the edge of the legal system "as assessment criteria is definitely legal and not unlawful"²³. Although in the light of arbitration proceedings in Polish law the literal wording of provisions refers to the legal order, and thus this institution does not constitute a reference to non-legal norms, it is still a kind of reference²⁴.

On the other hand, the adjudicating body is not legitimized by the public policy clause to make an assessment solely on the basis of its own conviction. The basic principles of the legal order applied by such a body must comply with certain premises, and in particular fall within the legal norms of the court. Compared to other general clauses, where any valid reason can be the basis for use, there is a significant restriction of the freedom of adjudication regarding the public policy clause, however the deciding authority decides on the classification of standards as basic and on the manner of violation. This approach cannot therefore be rejected in its entirety²⁵.

Contrary to other general clauses, the public policy clause is more precise, although it is not a reference in the strict sense, because it would not have an open character proper to general clauses²⁶.

In turn, *M. Pilich* believes that making a choice between one and the other of the above positions depends on the view on the axiology of the legal system. It suggests that a compromise position should be adopted, which implies that the judge would not be embarrassed by the formulated catalog of absolutely protected values, while respecting the fact of "stiffening" the public order clause by widely accepting certain values as momentous due to the integrity of the legal order²⁷.

The above position is supported by one of the features of the discussed legal institution, namely the change in time and place of the public order clause, which cannot be eliminated by the once and for all established and unchanging catalog of absolutely protected values, as well as its protective function against commonly shared in a given a society of values, not values shared only by the adjudicator in the case²⁸.

Two postulates related to the way these legal institutions are used are related to the issue of the freedom to adjudicate in the context of the application of the public policy clause, and more generally of all general clauses. The first is a ban on their abuse. Their application cannot result in undermining the certainty of the applicable legal order or be a facilitating alternative if it is possible to issue a ruling on more precise provisions appropriate for typical situations, since general clauses can be used only in cases expressly demanding it. Related to this is the second postulate which requires the fullest justification of the reasons for each such ruling²⁹.

These postulates are aimed at avoiding too much discretion in application of the law by the authority issuing the ruling.

5. The general clause of the rules of social coexistence

The Supreme Court's decision of 29th March 1979³⁰ concerns a general clause other than a public policy clause, namely good (bad) faith, however, based on the analogy, the Supreme Court's view regarding this clause can be applied to public policy.

The Supreme Court ruled that the concept of: "(...) good (bad) faith as an element of legal constructions has the character of so-called general clause. The essence and

²³ PILICH, M., *op. cit.*, p. 187.

²⁴ RYCKO, N., *op. cit.*, p. 211.

²⁵ RYCKO, N., *op. cit.*, p. 211.

²⁶ RYCKO, N., *op. cit.*, p. 211.

²⁷ PILICH, M., *op. cit.*, p. 187.

²⁸ RYSZKOWSKI, K., *Klauzula porządku publicznego...*, p. 18.

²⁹ RYCKO, N., *op. cit.*, p. 211-212.

³⁰ Order of the Supreme Court of 29th March 1979 (III CRN 59/79).

function of all general clauses in civil law is the possibility of taking into account various factual circumstances in the assessment, which cannot - in isolation from a specific factual situation (legally relevant situation) - be according to some scheme having an absolute value - assessed once and for all and in the same way". And the very concept of good faith falls together with other general clauses (with the principles of fair dealing and decency) in the next general clause, namely the principles of social coexistence³¹. The latter clause consists of a flexible system of rules which change over time³².

In the Polish Code of Civil Procedure³³ (in the wording before 17th October 2005³⁴), the violation of the rules of social coexistence by the arbitral tribunal was a premise for setting aside the arbitration award (Article 712 § 1 item 4 of the Code of Civil Procedure in the pre 17th October 2005 version), taken under deliberation *ex officio* (Article 714 Code of Civil Procedure) and before 5th February 2005³⁵ the condition for refusal by a common court to issue a decision on the enforceability of an arbitral award (Article 711 § 3 of the Code of Civil Procedure in the pre 5th February 2005 version and Article 711 § 4 of the Code of Civil Procedure, in the version in force until 16th October 2005, in which they were replaced by decency)³⁶.

According to the original version of Article 712 § 1 item 4 of the former Code of Civil Procedure, the party "... may demand that the arbitration award be set aside if (...) the decision on the parties' requests is incomprehensible, contains contradictions or violates the rule of law or the principles of social coexistence in the Polish People's Republic;". In the version applicable from 5th February 2005, the phrase "... in the Polish People's Republic;" was deleted³⁷.

In addition, in accordance with Article 714 of the former Code of Civil Procedure version, in force until 4th February 2005, stated that the court "... is bound by the grounds for a petition to set aside an arbitration award, but it takes *ex officio* into consideration whether the award does not violate the rule of law or the principles of social coexistence in the Polish People's Republic", while since 5th February 2005 "... he is bound by the grounds for a petition to set aside an arbitration award, but he takes *ex officio* to consider whether the award violates the rule of law or decency"³⁸. Containing the second condition of Article 711 § 3 of the former Code of Civil Procedure, until 4th February 2005, the court stated that the court "... would refuse to issue such a decision if it appears from the arbitration court files that the verdict or settlement violates the rule of law or the principles of social coexistence in the Polish People's Republic", whereas on 5th February 2005, in accordance with Article 711 § 4 of the former Code of Civil Procedure, the court "... refuses to declare the effectiveness or enforcement clause, if it appears from the files of the arbitral tribunal that the verdict or settlement by its content violates the rule of law or decency"³⁹.

³¹ PAGACZ, G., "Klauzula porządku publicznego w międzynarodowym arbitrażu handlowym", BECZEK W. (ed.), *Prace laureatów konkursu na najlepszą pracę magisterską dotyczącą problemów sądownictwa polubownego i mediacji im. prof. dr. hab. Jerzego Jakubowskiego. Edycja piąta*, Warszawa 2012, p. 94.

³² Resolution of the Supreme Court from 29th March 1979 (III CRN 59/79), see <http://www.arslege.pl/orzeczenie/2317/postanowienie-sadu-najwyzszego-izba-cywilna-z-dnia-29-marca-1979-r-iii-crn-59-79/>.

³³ ERECIŃSKI, T., "Arbitraż a sądownictwo państwowe", "Przegląd Ustawodawstwa Gospodarczego" 1994, No. 2, p. 7.

³⁴ Act of 17th November 1964 - Code of Civil Procedure (Journal of Laws No. 43, item 296 as amended).

³⁵ I.e. before the entry into force of the Act of 28th July 2005 amending the Act - Code of Civil Procedure (Journal of Laws No. 178, item 1478).

³⁶ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 58.

³⁷ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 58.

³⁸ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 58-59.

³⁹ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 58-59.

6. The public order clause in the substantive civil law

The public order clause cannot be found in the branch of the substantive law, which is fundamental to the entire legal system of a given state, namely the civil law. In the light of the original wording of the Polish Civil Code, the concept of a three-part limitation of contractual freedom was expressed, despite the absence of such an *expressis verbis* concept in the Civil Code itself. It was postulated (in particular *W. Czachórski*) a threefold restriction of contractual freedom, namely by: mandatory provisions of the Act, principles of social coexistence, principles of the system and the aims of the Polish People's Republic. At that time, the principles of the political system and the objectives of the Polish People's Republic were a normative concept, because Article 4 of the Civil Code, and in addition they performed a role similar to the public order clause⁴⁰. This provision ceased to apply on 1st October 1990⁴¹.

Pursuant to the Article 4 of the Civil Code, the provisions of "... civil law should be translated and applied in accordance with the principles of the political system and the purposes of the Polish People's Republic". The doctrine postulated the elimination of the general clause from this Article due to its overt contradiction with the idea of the rule of law⁴², and thus with the public policy clause that forms part of it⁴³.

Contradiction with the Act is a contradiction not with a given provision, but with a legal norm, then referring to public order is unjustified. Basic norms for a given country that define its system can be derived, among others from its constitution. This author also argued that in the situation of normalizing the state system in the concept of the Act, recognizing the principles of the system and the objectives of the Polish People's Republic as a non-statutory restriction of contracting freedom leads to a violation of the rule of law. This would lead to the prohibition of legal acts contrary to the so-called postulates of the legal system⁴⁴.

M. Olechowski indicates, however, that such threats are an immanent feature of general clauses, which are particularly clearly visible in undemocratic regimes. General clauses are only instruments whose content and functions are determined depending on the systemic conditions of a given country. The public policy clause can play a special role here⁴⁵.

The current lack of a public policy clause in Title I "General provisions" of the third book "Commitments" of the Civil Code is assessed differently in doctrine. *Z. Radwański* emphasizes the strengthening of protection of the parties' freedom, as the public order clause exposed this freedom to the demands of the legal system⁴⁶.

M. Safjan (comparing Article 55 of the Code of Obligations⁴⁷ with the identical Article 353¹ of the Civil Code) takes the position that: "the criterion of decency and public order mentioned in Article 55 of the Code of Obligations largely coincides with the general clause of the principles of social coexistence"⁴⁸. He indicates that the restrictions that result from the provisions of the Act to the extent that they require respect for the basic principles derived from the entire legal order, refer to that appearing in Article 55 of the Code of Obligations and in other public policy clauses. It also states that the public order clause regarding autonomous significance (not

⁴⁰ OLECHOWSKI, M., "Porządek publiczny jako ograniczenie swobody umów", "Państwo i Prawo" 1999, No. 4, p. 66.

⁴¹ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 59.

⁴² SAFJAN, M., "Klauzule generalne w prawie cywilnym (przyczynek do dyskusji)", "Państwo i Prawo" 1990, No. 11, p. 59.

⁴³ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 59.

⁴⁴ OLECHOWSKI, M., *op. cit.*, p. 66-67.

⁴⁵ OLECHOWSKI, M., *op. cit.*, p. 67.

⁴⁶ OLECHOWSKI, M., *op. cit.*, p. 70.

⁴⁷ Regulation of the President of the Republic of Poland of October 27th 1933 - Code of Obligations (Journal of Laws No. 82, item 598, as amended),

⁴⁸ SAFJAN, M. "Zasada swobody umów (uwagi wstępne na tle wykładni art. 353¹ k.c.)", "Państwo i Prawo" 1993, No. 4, p. 14.

overlapping with the Act) was mainly absorbed by the clause of social coexistence rules⁴⁹.

The view that the public order clause was absorbed by the clause of social coexistence in the light of the substantive civil law is not accepted in the civil procedure, and in particular in the jurisprudence of the Supreme Court⁵⁰.

Even in the literature on the subject, this position is not shared in its entirety, since the rules of social coexistence are accepted norms of conduct closely related to moral rules, relative to good faith in an objective sense, and with the principles of equity. If public order was understood as the basic principles of the social, economic or state system, then only the first element of public order could be considered as overlapping, at least in part, with the clause of social coexistence rules⁵¹.

In addition, the doctrine indicates the impossibility of expanding the catalog of restrictions "(...) with such elements that were not directly expressed in the content of the provision (Article 353¹ of the Civil Code), and which were previously derived many times, especially in arbitration practice, e.g. from general assumptions of the socio-economic system"⁵².

It is worth referring to the judgment of the Supreme Court of 07th May 2003⁵³, which, based on Article 5 of the Civil Code, indirectly indicates the possibility of contradiction with the principles of the rule of law in its use, and indicating the manner of applying the clause of the rules of social coexistence by analogy, indicates the rules of applying the public order clause. According to Supreme Court's view, the provision of "(...) Article 5 of the Civil Code being a general norm, it does not specify what should be understood by the principles of social coexistence. The doctrine and case law unanimously emphasize that special care must be taken when adopting abuse of rights. In practice, this should occur in emergency situations. It is important to bear in mind two fundamental circumstances, namely that it is presumed that a person exercising his right does so in a manner consistent with the principles of social coexistence and that he appeals in particular to the general clauses provided for in Article 5 of the Civil Code cannot indirectly undermine the force of applicable laws. Such a practice - as is emphasized in the doctrine and case-law - could lead to a violation of the rule of law in a democratic state ruled by law (...). Application of Article 5 of the Civil Code (...), therefore, requires a comprehensive assessment of all the specific circumstances of the case under consideration in close connection with the specific facts. In another ruling of the Supreme Court, he emphasized that it is not possible to generally refer to - by the nature of things - indefinite principles of coexistence, but it should be specifically indicated which of the principles of social coexistence adopted in society would be violated in a particular situation (...) This position has already been approved in the literature"⁵⁴.

In the judgment of 27th June 2001⁵⁵, the Supreme Court ruled that by applying "(...) Article 5 of the Civil Code however, one must bear in mind its special nature resulting from the use of general clauses in it. The use of provisions containing general clauses, although indispensable, poses a threat to certain principles of the rule of law, which is why, when interpreting provisions containing general clauses, the constitutional legal aspect acquires particular significance".

This ruling is an interesting contribution to examining the compatibility of the use of general clauses through the prism of another general clause, namely the public policy clause. However, this will not be *idem per idem* study, due to the different scope of each general clause. The Article 5 of the Civil Code itself states that one cannot "...

⁴⁹ SAFJAN, M. *Kodeks cywilny, t. 1: Komentarz do art. 1-449*¹⁰, PIETRZYKOWSKI, K. (ed.), Warszawa 2011, p. 1266.

⁵⁰ RYSZKOWSKI, K., *Klucz do procesowego porządku...*, p. 62.

⁵¹ OLECHOWSKI, M., *op. cit.*, p. 71.

⁵² SAFJAN, M., *Zasada swobody umów...*, p. 14.

⁵³ Judgment of the Supreme Court of 07th May 2003 (IV CKN 120/01), LEX No. 141394.

⁵⁴ RYSZKOWSKI, K., *Klucz do procesowego porządku...*, p. 62-63.

⁵⁵ Judgment of the Supreme Court of 27th June 2001 (II CKN 604/00).

make his right of use which would be contrary to the socio-economic purpose of this right or to the principles of social coexistence. Such action or omission by the rightholder shall not be considered as exercising his right and shall not enjoy protection"⁵⁶.

In the judgment of 26th October 2005⁵⁷ the Court of Appeal in Poznań decided that the ruling "... of the Arbitration Court issued in violation of Article 64 of the Civil Code and Article 65 § 1 and 2 of the Civil Code. it violates the rule of law, as it forces the defendant to conclude a specific, unfavorable contract, even though the obligation to conclude this contract does not result from the act or from the obligations assumed by the defendant. In this way, the principle of freedom of economic activity is violated, including in the freedom to shape the content of contracts, as well as in the freedom to choose an economic partner"⁵⁸.

In the judgment of 20th December 2006⁵⁹, the Supreme Court stated that the principles of social coexistence "(...) undoubtedly fall within the concept of " legal order", and the violation of which means unlawful action, in order to be effective, should indicate what principles of social coexistence - in the circumstances of the present case - they have been infringed". Thus, the Supreme Court ruled in this judgment about the inclusion in the public order of the principles of social coexistence in the light of the legal status introduced by the amendment to the Code of Civil Procedure (of 28th July 2005), which did not introduce premises alternative to the repealed provisions containing the principles of social coexistence⁶⁰.

The doctrine, on the basis of the Supreme Court judgment of 7th May 2003⁶¹, presents the position according to which the exercise of law (understood as the omission or action of the right holder), which would violate the principles of social coexistence, would also be a violation of the public order clause⁶².

A more moderate position indicates that good morals and principles of social coexistence may also be part of the public order clause⁶³.

This last view corresponds to the judgment issued under the Code of Civil Procedure before the judgment of 12th March 2002 cited in the amendment Article⁶⁴ in which the Supreme Court ruled that the concepts of "(...) rule of law and principles of social coexistence are not the same. Including them in one normative category of general clauses does not mean that they can be used interchangeably and assign the same content"⁶⁵.

As we can see there are differences in both doctrine and jurisprudence and hence doubts in practice. My conclusion will try to fix them.

7. Conclusion

In my opinion, the view that includes all violations of the principles of social coexistence as violations of public order is too far-reaching, since not every violation of legal regulations causes a violation of public order, all the more not every violation of decency should result in the activation of the public order clause. The condition of violating the principles of social coexistence must therefore meet the same requirements as the condition of contradiction with the basic principles of the legal

⁵⁶ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 63.

⁵⁷ I ACa 172/05.

⁵⁸ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 63.

⁵⁹ Judgment of the Supreme Court of 20th December 2006 (IV CSK 263/06).

⁶⁰ RYSZKOWSKI, K., *Klauzula procesowego porządku...*, p. 64.

⁶¹ IV CKN 120/01.

⁶² PAGACZ, G., *"op. cit."*, p. 94.

⁶³ ERECIŃSKI, T., CISZEWSKI, J., *Międzynarodowe postępowanie cywilne*, Warszawa 2000, p. 347.

⁶⁴ Judgment of the Supreme Court of 12th March 2002 (IV CKN 844/00).

⁶⁵ RYSZKOWSKI, K., *Klauzula porządku publicznego...*, p. 20.

order⁶⁶, in order to maintain state's legal stability and party confidence in the Polish arbitration.

My view is consistent with the opinion of the Supreme Court expressed against the background of the previous legal status, which in the content of the justification of the judgment of 3rd September 1998⁶⁷ stated that: "(...) it is assumed that a request for violation of the rule of law is justified when the effect an arbitration award violates the basic principles of the state legal order (...). Similarly, when it comes to those indicated in Article 712 § 1 item 4 of the Code of Civil Procedure criterion of principles of social coexistence, it is necessary to indicate specific principles of social coexistence with which the effects of an arbitration award cannot be reconciled"⁶⁸.

The above considerations lead to the unequivocal conclusion that the public policy clause is the general clause, which does not coincide with all the principles of social coexistence. General clauses can also be found in other branches of law, and in particular in the civil procedural law, primarily in a relationship with the public policy clause. The above remarks will therefore apply by analogy there⁶⁹.

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⁶⁶ RYSZKOWSKI, K., Klauzula procesowego porządku..., p. 64.

⁶⁷ Judgment of the Supreme Court of 3rd September 1998 (I CKN 822/97).

⁶⁸ RYSZKOWSKI, K., Klauzula procesowego porządku..., p. 64.

⁶⁹ RYSZKOWSKI, K., Klauzula procesowego porządku..., p. 64.

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