

## BIBLIOGRAPHIE \* BIBLIOGRAPHY

DROIT POLONAIS  
CONTEMPORAIN  
№ 5, 1965

### NOTES CRITIQUES \* NOTES

Jan Kosik, *Zdolność państwowych osób prawnych w zakresie prawa cywilnego* [The Capacity of State Legal Persons in Civil Law], Warszawa 1963, Wydawnictwo Prawnicze, 122 pages.

The capacity of legal persons in (private) civil law is a problem of particular importance and relevance in the socialist countries, owing to the acceptance of the principle of planning and co-ordination in all spheres of social life, and also because of the fact that economic activity is usually carried on by the following legal persons: State enterprises, their combines, as well as co-operatives and social organizations.

All socialist organizations that carry out the national plans have certain defined duties, while the State administration co-ordinates these activities and tries to prevent the duties and functions of the diverse organizational units from colliding with each other; on the contrary, it tries to make these units supplement each other. In such a system of planning and co-ordination the autonomy of socialist legal persons must be limited in certain directions. For example, the legal capacity of these persons is confined by law to a fixed sphere of their duties, or to the sphere of action fixed by their founding document or by statute. This capacity of legal persons is referred to in the literature as "special capacity."

The Polish *Civil Code* of 1964 formulates in Art. 37 the principles of this special capacity: "The legal capacity of a legal person does not include rights and duties that have been precluded by a law or a statute based on it. Likewise, it does not include rights and duties that are not connected with the sphere of activity of the given legal person: this, however, does not affect the validity of the legal activity, unless the other party knew that such activity concerned such rights or duties."

Professor Kosik interest in the special capacity of legal persons is of long standing, and was evident during the public discussion on the draft of the *Civil Code*. In the draft the Art. 37 referred to above had a slightly different wording — transgression of special legal capacity was treated more rigorously. The book therefore represents a point of view put forward during the discussion on the draft of the *Civil Code*, a point of view which probably was not without its effect on the final formulation of Art. 37.

But Professor Kosik's dissertation is not confined to evaluation of the formulations in the draft of the *Civil Code*. The author acquaints the reader with the doctrines on this question, the legislation and jurisdiction concerning it both in the socialist countries, including the U.S.S.R., and in the capitalist countries. In the first part of the book he discusses key problems such as legal capacity and capacity to perform legal sets, or the theories of legal personality. As far as the law in the capitalist countries is concerned, his attention is naturally concentrated on the Anglo-Saxon doctrine of *ultra vires*, whose substance and development he discusses both in the British and in the American version. The author has taken it upon himself to bring out the differences between the principle of *ultra vires* and the socialist construction of special legal capacity.

In later chapters of the book the author explains the principles on which special legal capacity is based in the socialist countries, and replies to views expressed by other authors in the literature of the socialist countries. The author advocates caution in formulating that principle, and thinks that transgression of legal capacity should have consequences in civil law.

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