

CIVIL LAW

I. In 1964 there have been enacted in Poland the following codes being in force from the 1st of January 1965: Civil Code, Code of Civil Procedure, Family and Guardian Code; and in 1965 appeared the international private law/statute dated November 12th, 1965 (*Dziennik Ustaw* [Journal of Laws, abbrev. *J. of L.*], No. 65, item 290).

In consequence of the codification made there was a need to issue quite a number of legal regulations. Some of them have already been issued in 1964 and 1965. In 1966 then there have been announced regulations issued by virtue and on execution of delegations included in the Civil Code and/or Code of Civil Procedure. These are:

1. Ministers' Council order of June 14th, 1966, on things found (*J. of L.*, No. 22, item 141) issued by virtue of Art. 185 of Civil Code.

According to enactments of the above order the appropriate authorities to receive information on finding things (in the case a finder is not aware who is the right person to get things or he does not know the address of such a person) are organs of financial administration at the praesidium of district (or of equal rank) people's council in the area of which a thing has been found. The unit obliged to keep a found thing cannot refuse to do so if a finder will demand it unless a thing in question is of no value. There are also taken into consideration such cases in which a finder may only indicate where a found thing is.

The order determines obligations of a finder as well as of the unit in which found things are kept. Moreover, there are indicated ways for seeking a person entitled to get a found thing, and costs involved for its storage.

According to Art. 186 of Civil Code a finder who has done his duty may demand a finder's reward amounting to 1/10 of a thing's value, and he should proceed with his demand not later than in the very instance a found thing is being given out to a person entitled to get it. In case a found thing has become a state's property a finder's reward is to be paid to a finder by the unit which has stored a thing.

Provisions of the order do not apply to things found in public buildings or transport. In such cases a finder is obliged to hand over a found thing to a person in charge of a house or transport.

2. Issued by virtue of Art. 570, Art. 571 § 1, and Art. 572 of Civil Code Order of the Minister of Agriculture dated October 7th, 1966, on responsibility in sales for important deficiencies of some animals offered for purchase (*J. of L.*, No. 43, item 257) including horses, sheep, and minks.

It is made clear what is to be understood under the term “important deficiency.” There is also determined period during which a person who sells an animal is responsible when a deficiency becomes obvious, and time in which a person who sells an animal should be notified about the deficiency.

3. Two executive orders concern limitations in proceeding an execution. Issued by virtue of Art. 830 of Code of Civil Procedure the Order of Minister of Justice dated May 18th, 1966, on indicating things belonging to a farmer that are not a subject of the legal execution (J. of L., No. 21, item 138). The order excludes a number of things belonging to a livestock and movables property of a farmer apart from exclusions indicated in Art. 829, item 3 of the Code of Civil Procedure.

Certain exclusions indicated in the order do not apply to cases for alimony or other money obligations of the kind of alimony, and in cases of claims for money earned for work done on debtor's farm provided that dues claimed for are for a period not longer than 6 months. The limitations in execution indicated in the order do not apply in the case in which all goods that make a real estate of a farm under the debtor's management are to be seized simultaneously.

The Ministers' Council order dated September 6th, 1966, on defining the property of co-operative farms that is excluded from a legal execution (J. of L., No. 38, item 230) issued by virtue of Art. 1064, § 2 of Code of Civil Procedure extends the range in which property is not to be subject of legal execution as compared with exclusions regulated by the Code of Civil Procedure.

4. The order of Minister of Justice dated October 1st, 1966, on procedure in securing an estate and making an inventory (J. of L., No. 43, item 258) issued by virtue of Art. 639 of Code of Civil Procedure has regulated the mentioned activities that rest with state notary who may, however, charge with them a court executive official in the district in which are the goods to be protected or entered on an inventory.

The order regulates the way in which an inheritance is to be protected, the procedure employed, and the rights and obligations of officials involved. Particular provisions concern protection of inheritance of a person who deceased on a sea-boat.

5. Issued by virtue of Art. 1136 of Code of Civil Procedure Order of Minister of Justice and the Foreign Minister dated August 26th, 1966, on principles and the way of applying for legal assistance through courts of justice and state notary's office in the international civil procedure (J. of L., No. 40, item 240).

This order cancelled the order issued by the Minister of Justice and the Foreign Minister dated December 29th, 1932, that regulated analogous questions (J. of L., No. 118, item 974). The order concerns the cases in which principles and the way of applying to foreign courts and other foreign authorities for legal assistance are not regulated or have been regulated by means of international agreements not precisely enough.

Apart from the specified executive orders it is still to be mentioned announcement of the uniform text of the law dated June 17th, 1959, on joint pecuniary responsibility of staff for losses in trade enterprises annexe to the announcement of the Minister of Home Trade dated November 28th,

1966 (J. of L., No. 58, item 319). To this law the Minister of Home Trade issued the executive order dated November 28th, 1966 (J. of L., No. 52, item 320), which came in force beginning January 1st, 1967.

According to Art. 2 of the above law employees in a socialized store department that belong to the staff selling goods may accept in form of written agreement a joint pecuniary responsibility for damages caused by shortages in goods or other elements of the property in a shop in which: 1) staff working in one shift is of no more than 8 persons' 2) when working in two or three shifts a number of persons do not exceed 12, and in bakeries where work is in three shifts a number of selling personnel do not exceed 10 persons.

On the other hand, employees in self-service stores, service stations, enterprises of service character, units of mass feeding, messrooms, restaurants, and the like, may accept the joint pecuniary responsibility with no regard to a number of persons employed in selling or doing service.

Employees jointly responsible are responsible to the extent stated in the agreement. If, however, it is proved that the deficiency is caused in full or in part by certain employees the responsibility will then lie fully or partly with persons involved. Partly responsibility does not cancel the responsibility for the rest to be covered along with other employees according to the principle of joint responsibility.

Employees jointly responsible are free from the responsibility to the extent to which they prove that deficiency occurred in circumstances they are not responsible for. Joint responsibility indicated in the statute does not cancel individual responsibility for other goods or property entrusted with a given person. Joint responsibility may be settled under the condition that all goods and other elements of real property in a shop be entrusted either with employees altogether or with a manager only or any employee in circumstances enabling other employees to participate in making an inventory and reporting in connection with it any objections.

The period which is not to exceed thirty five days during which the employee who is jointly responsible is suspended in his duties is of no consequence to the extent of his responsibility as well as on the responsibility of other employees jointly with him responsible.

In case the agreement on joint responsibility for damages due to shortages is not concluded the responsibility lies then with the manager of a department store and his assistant (assistants.) if goods in a shop or other elements constituting the property will be entrusted with them jointly.

The executive order to the law discussed reads that the agreement on joint pecuniary responsibility may be concluded if the majority of employees selling goods in a store department will give their consent to take on such responsibility; in the contrary case, the management of an enterprise is to offer a similar job in the same locality to employees that do not accept joint responsibility.

The order regulates also some questions concerning absence from work of an employee jointly responsible, cases of desisting from the agreement on joint pecuniary responsibility by the trade enterprise, and cases of giving notice by one of the parties, The question of responsibility taken on by the

manager of the store department and his assistant for a property entrusted with them is regulated too.

II. The legal act which is essential for legal relations in the socialized economy is the order of the Chairman of Planning Commission by Ministers' Council dated October 7th, 1966, on general terms of sale and delivery contracts between different inland units of the socialized economy (Polish Monitor, No. 57, item 276).

General terms of sale contracts are included in the annex to the above order announced in the same issue of the Polish Monitor. The order provides for that till the general terms of delivery contracts are not issued, general terms of sale contracts are employed according to the delivery contracts regulated by Art. 605 and following of the Code of Civil Procedure.

The discussed order has been issued by virtue of Art. 384 § 1 of the Code of Civil Procedure which authorized the Ministers' Council or on behalf of the Council other supreme organs of government administration to determine general terms or patterns of contracts for certain category of contracts between individual units of the socialized economy or between these units and other persons, and by virtue of § 1, section 1, item 1 of the resolution No. 97 issued by Ministers' Council dated April 27th, 1965, on authorizing chief organs of government administration to determine general terms for certain category of contracts (Polish Monitor, No. 23, item 109).

At the same time when general terms of sale contracts have appeared, there have been issued directions of the Chairman of the State Planning Commission by the Ministers' Council dated October 7th, 1966, on procedure in concluding and effecting sale and delivery contracts (Polish Monitor, No. 57, item 277).

General terms of sale contracts are indicated within ten chapters. These are not an independent act and are properly applied only after the appropriate regulations of the Civil Code are considered or at least articles in § 1 of the above directions, and particularly articles 56 - 125, 353 - 404, and 456 - 534 of the Civil Code, and still regulations of sale contract (articles 535 - 588 of Civil Code), and of delivery contract (articles 605 - 612 of Civil Code).

In Chapter 1 of general terms of sale contracts the following provisions are to be emphasized: § 1, item 1-3 provide that individual units of the socialized economy should co-operate with each other in making contracts as well as in effecting them with particular consideration of their duties with regard to national economic plan, economy of production and business relations, and their contribution in protecting national economy against losses. Obligations of these units should be fulfilled in accordance with their contents and in the way satisfactory for their purpose; principles of social co-operations and customary manners, if any, are to be observed.

The same way of co-operation should be adopted by authorized persons when fulfilling their obligations; § 2, item 2 says about scrupulousness of an individual in his duty do give particular attention to the question of protecting social property.

In some cases justified from the economic point of view parties may change or cancel the agreement (§3, item 1). If time agreed upon for sup-

plying goods (full amount or part of it) is not over the buyer may for important reasons, desist from an agreement. In such a case he is exempted from conventional penalties, he has, however, to recompensate a seller for his losses due to his expenses for producing goods and loss of his usual profit, i. e. a profit a seller would have obtained if a buyer had not desisted from the agreement (i§ 3, item 2 and 3).

The last question that has been regulated in general provisions is about proper qualities of a product (§ 4).

Chapter 2 regulates a form of the agreement which according to the Civil Code is not necessarily to be written when sale contract is to be concluded. On the other hand, according to the discussed general terms of sale the conclusion of sale contract is to be confirmed in writing in form of an act signed by both parties or by means of written acknowledgement accepting an order or offer placed in written form.

In urgent or customary cases the contract may be concluded personally, by telephone or telegraph if at least one of the parties involved will confirm it in writing what is to be effected within three days or goods will be given out by a seller to a buyer or conveyer not later than within the said period. The above provisions do not transgress the bylaws concerning preliminary contentions, silent acceptance of an offer, and requirements for written form the rigour of voidance in cases indicated in the Civil Code.

Further chapters contain regulations of questions concerning giving out goods (chapter 3), price (chapter 4), payment and terms of payment (chapter 5), and packing (chapter 6). Regulations in chapter 7 on guarantees of the seller regarding physical defects of goods complete and partly modify the appropriate provisions of the Civil Code. Chapter 8 deals with guaranty. It is to be noted that Civil Code does not define the notion of guaranty (see articles 577—582 of Civil Code) but only determines what are in case of doubt the consequences of giving a guaranty.

According to § 46, item 2 a guaranty consists in promise that all the defects of goods found within a period agreed to in a transaction are to be removed free of charge or exchanged for faultless wares. Guaranty terms are 12 months beginning the day of supplying goods or giving them out to a person that does not constitute a unit of the socialized economy if not otherwise agreed to in a transaction. The terms, however, are not to exceed 24 months beginning a day in which goods were given out to an individual that purchased them directly at the producer's (for more details on general terms of sale see § 46, item 3).

Extensive regulations are applied to the indemnification problem (chapter 9, §§ 49—54). Particular attention should be given to the provision of § 49 which reads that in the case in which a damage suffered from the party in receipt to claim is greater than the amount of conventional penalty or if a damage occurs due to happenings not included in such a penalty description then the party in question will be in right to claim for the amount of compensation greater than the amount of penalty. In such a case general principles are to be observed with consideration, however, of general terms of sale regulations with regard to particular conditions excluding respon-

sibility if a transaction is not effected or if it is effected not properly (chapter 10).

The debtor cannot avoid paying the conventional penalty having as an argument that the damage cannot be proved or that evaluation of losses is in fact greater than the amount to be compensated. In a transaction the parties may agree upon that a seller be not obliged to pay for defects if a defect is negligible and the isolier removes it or exchanges it for good article immediately or within a period agreed upon with a buyer (§ 2, section- 2, item 3). Such an agreement, however, may be concluded only with regard to very small defects. Any clause that exempts from responsibility for more important imperfections is void. The parties may in their transaction agree upon a higher amount of penalty than the amount determined in regulation's given in chapter 9. On the other hand, if the amount of penalty is to be agreed lower the consent of the superior unit of the party receiving a compensation must be obtained (if a penalty is to be lowered by no more than a half of the amount in question) or the consent of the involved minister that party is subordinated to (if the penalty is to be lowered by more than a half of the amount in question).

Regulations concerning general terms of sale comprised in chapter 1 refer to cases in which a unit of the socialized economy may be exempted from the obligation to compensate for losses if it proves that it failed to fulfill the obligation due to an agreement in spite of all the exertions with particular attention given to the duty of protecting carefully public property.

In addition to that, in chapter 10 of the above regulations there are indicated particular situations in which exemptions from compensation for not accomplishing the terms of an agreement or for effecting them not properly are justified.

The discussed order and the added to it as an annex general terms of sale age bidding beginning the 1st of January 1967. With that day it is abolished the order of the Chairman of Planning Commission by Ministers' Council dated April 2nd, 1963, that refers to assignments, distribution lists, and adjustments of supplies as well as general terms of supplies in internal circulation between units of the socialized economy (Polish Monitor, 1963, No. 34, item 172; 1964, No. 73, item 343; 1965, No. 64, item 355) with the exception of the regulation given in § 1, section 1, item 1 and general provisions concerning assignments, distribution lists, and adjustments of supplies indicated in Annex 1 to the mentioned order.

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