PERSPECTIVE OF UNIFICATION OF OBLIGATION LAW IN ASPECT OF IMPOSSIBILITY OF PERFORMANCE

ADAM POSZEWIECKI
Faculty of Law and Administration/Departament of Civil Law and Civil Procedure,
University of Warmia and Mazury

MIECZYSŁAW GOETTEL

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Resume

The differences that occurred between legal systems constituted a brake in the development of the international trade, therefore, since the end of the 19th century there has been a tendency to unify legal systems, which is called the unification of law. The unification of law has changed the perception of the international private law and to a certain extent increased the role of this domain of the law.

There is a number of reasons that make the unification of law an extremely difficult process. It has to be taken into consideration that it may have the scope limited only to a few countries. Exceptionally it embodies certain fields of the law, predominantly the unification of law concerns exclusively civil law privity with an international element.

The most ambitious undertaking that appeared during last decades in the area of law unification, was an attempt to unify the obligation law. The task of unification of the obligation law is very difficult, especially by means of its social significance and basic differences between different legal systems.

First works on unification of contract law were done before the outbreak of the Second World War, but most important works on unification of contract law like the United Nations Convention On Contracts For The International Sale Of Goods, (CISG)were done in the post- war period. Another significant event for the matter in question, publication of a draft of UNIDROIT Principles of International Commercial Contracts, (UPICC) and publication of the Principles of European Contract Law (PECL) prepared by the Lando Commission. Both projects of the obligation law unification display similarities. They cannot be considered a source of a law in force but they obviously constitute a recapitulation of the current practice in the realm of the international conventional obligations, being at the same time a form of a model legislation for a national legislators.

Most of the institutions which appear in the projects is reflected in current law orders, they were developed as a result of a law-comparative or historical analysis. However some of regulations in both projects was readapted in a manner often revolutionary strayed away from their traditional formulation. To the legal institutions which as a result of the unification work gained a brand new shape, belongs mainly the institution of impossibility of performance. Therefore, this institution has to be particularly examined because this specific example may perfectly show the advantages and disadvantages of the unification of private law process.

The institution of impossibility of performance is known from Roman law, but its modern shape was eventually created in XIXth century Germany. The impossibility of performance is in most of legal systems divided into initial and subsequent. It means, that the legal result of impossibility of performance depends on if it occurred before or after formation of contract. Initial impossibility leads to the contract is null and void, while subsequent impossibility may lead to debtor's liability.

The project of unified obligation law proposed by UNIDROIT and the Lando Commission is totally opposite to a traditional model. The initial impossibility has no influence on contract validity. As a result a traditional division into initial and subsequent impossibility does not longer exist in those projects. In case of initial impossibility a contract stays valid and it may be a debtors civil liability.

The only country, which decided to introduce the solutions proposed by UNIDROIT and the Lando Commission into its own legal system was Germany. German legislator claim, that the provision of projects of UNIDROIT and the Lando Commission related to the impossibility of performance are concentrated on solving practical problems and more flexible than solution proposed by the Pandectists. Other countries are rather reluctant to introduce the new shape of impossibility of performance into their legal systems. This may be a result of the fact, that states would rather preserve their original legal ideas, which were under the influence of tradition, history and the civil law development level.

That is why unification should be subsidiary, which means it should be conducted only in those areas of law, where it is truly necessary in order to provide efficiency of international economics.

We should also consider if the existing particularism of legal systems is an advantage. The pluralism of private law allows the countries to compete with each other in enforcing of solutions good for entrepreneurs, what is expected by them. But the pluralism of laws will be advantageous only when there will be clear rules of choice of law for the parties.

Historical experience of many countries, which had problems with particularism of law on its territory shows, that unification of private law should be done in few step. First off

all the rules of conflict of laws should be unified. The next step after collision norms unification may be a unification of obligation law.

To sum up, the process of obligation law unification is one of the most important processes in modern world, however it still seams to be *in statu nascendi*. Enforcing of the institutions which are totally unknown to the internal legal systems and sometimes which are incompatible to internal legal systems seems to be a step in bad direction. That is why, the best way of unification of private law is to unify provisions of international private law. This would connect advantages of unification with positive sides of existing legal pluralism.

Contact- email:

adam.poszewiecki@gmail.com