Ewelina Rogalska

Ordre public, general clauses, appliance of law by jurisprudence, french law

Kultura Bezpieczeństwa. Nauka-Praktyka-Refleksje nr 26, 254-267

2017

Kultura Bezpieczeństwa
Nauka – Praktyka – Refleksje
Nr 26, 2017 (254–267)
DOI 10.24356/KB/26/12

ORDRE PUBLIC, GENERAL CLAUSES, APPLIANCE OF LAW BY JURISPRUDENCE, FRENCH LAW

PORZĄDEK PUBLICZNY, KLAUZULE GENERALNE, STOSOWANIE PRAWA PRZEZ SĄDY, PRAWO FRANCUSKIE

EWELINA ROGALSKA

Abstract

The article describes the appliance of law in French and Polish legal systems and the role of jurisprudence in both jurisdictions. In France and Poland the functioning of general clauses is completely different and the aim of the paper is the presentation of thinking about law in both states by depiction of literature and judgements.

As the example I chose the clause of ordre public due to the vast differences in operation of the institution in both legal systems. It is a general clause being one of foundations of French civil law whereas in Poland it functions only in very limited range. In French law the main regulation is included in Article 6 of Code civil. The further rules refering to ordre public in the field of contract law are placed in art. 1102 and 1162. In 2016 there was the reform of law of obligations in Code civil and the legal status before and after were presented. Ordre public is effectively used by jurisprudence in a number of cases in French civil law. Due to rare changes in Code civil French courts have much more freedom in deciding about legal cases than the Polish ones. French state very deeply interferes into the economy so

the courts must be provided with legal instruments in order to deal with the problems and apply the rule of law to each case.
In Polish law ordre public existed in art. 55 of Code of obligations (freedom of contract) but nowadays we can find only in Article 7 of international private law. Ordre public is the field of international private law is vital but courts are very cautious in its appliance, limiting its usage only to a few cases, such as denial of registration a homosexual union into civil registry. Why Polish courts are so uneager to use the clause? In our legal culture the judges are wary of general clauses and the operation of ordre public is just one of examples.
This proves a different usage of general clauses in both legal systems and difference in legal cultures. French jurisprudence has an immense effect on the shape of law, courts actively apply the clause of ordre public while in Poland the verdicts are cautious. Way of thinking about law differs in both states despite the common heritage of Roman law and belonging to the tradition of civil law. In France the freedom of deciding about the cases in the major value while in Poland this certainty of verdicts is believed to be the most important principle.

Keywords:

Ordre public, general clauses, appliance of law by jurisprudence, French law

The article describes the appliance of law in French and Polish legal systems and the role of jurisprudence in both jurisdictions. In France and Poland the functioning of general clauses is completely different and the aim of the paper is the presentation of thinking about law in both states by depiction of literature and judgements.

As the example I chose the clause of ordre public due to the vast differences in operation of the institution in both legal systems. It is a general clause being one of foundations of French civil law whereas in Poland it functions only in very limited range. In French law the main regulation is included in Article 6 of Code civil. The further rules referring to ordre public in the field of contract law are placed in art. 1102 and 1162. In 2016 there was the reform of law of obligations in Code civil and the legal status before and after were presented. Ordre public is effectively used by jurisprudence in a number of cases in French civil law. Due to rare changes

in Code civil French courts have much more freedom in deciding about legal cases than the Polish ones. French state very deeply interferes into the economy so the courts must be provided with legal instruments in order to deal with the problems and apply the rule of law to each case.

In Polish law ordre public existed in art. 55 of Code of obligations (freedom of contract) but nowadays we can find only in Article 7 of international private law. Ordre public is the field of international private law is vital but courts are very cautious in its appliance, limiting its usage only to a few cases, such as denial of registration a homosexual union into civil registry. Why Polish courts are so uneager to use the clause? In our legal culture the judges are wary of general clauses and the operation of ordre public is just one of examples.

This proves a different usage of general clauses in both legal systems and difference in legal cultures. French jurisprudence has an immense effect on the shape of law, courts actively apply the clause of ordre public while in Poland the verdicts are cautious. Way of thinking about law differs in both states despite the common heritage of Roman law and belonging to the tradition of civil law. In France the freedom of deciding about the cases in the major value while in Poland this certainty of verdicts is believed to be the most important principle.

The comparison of appliance of general clauses by French and Polish jurisprudence on the example of ordre public

The ordre public clause is a legal institution, which functions in a number of jurisdictions. It originates from French Code civil[1]. It is present in Polish legal regime, but its functioning is limited to international private law. Its shape in modern Polish legal thinking is very different than existing before the Second World War; the mass reception of legal ideas coming from the Soviet Union effected with disappearing the clause of public order in the field of contracts from the Polish civil law. The aim of the paper is to present the ordre public clause operation in the French law in order to pose the question if that thinking of law on this issue would be relevant in modern Polish law and if the clause could be effectively applied by Polish courts. Due to spaciousness of the institution and limits of the con-

[1] French law once used to be in force in almost whole Europe because Napoleon Bonaparte introduced it to the legal systems of the states he invaded. [after:]: Sójka-Zielińska K., *Kodeks Napoleona. Historia i współczesność*, Warszawa 2008, p. 68.

tent, the research range in Polish law shall be confined to the appliance of the clause in international private law.

The limitation of the freedom of contract by the regulations of law is necessary, but not the only one that exists; this postulate is realised by Article 6 of the Code civil which reads "it is impossible to derogate by the statutes the laws referring to ordre public and good customs[2]". The term appeared during the discussions on the creation of the Code civil; the will of the parties is the most important principle of contractual relations and it should be applicable in the maximum range to all contractual terms and conditions. However, it stops in the moment when ordre public and moral order suffer.[3] Similar thought appeared in ancient Rome, in the works of Ulpian: *privatorum conventio iuri publico non derogat.* (*Dig*. 4, 17,45)[4]. The clause of ordre public existed also in the domain of contract law in Polish Code of obligations. It operated in Article 55 of the Polish Code of obligations: "parties forming an agreement can form it with their accord as long as its content or intent is not contradictory to ordre public, law or good customs[5]". This regulation was the inspiration for Article 3531 of the Polish Civil code; however without the described clause[6]. Ordre public is a general clause, a legal instrument which enables the legislator to leave the solution of the problem to the judge in the special cases. The role of general clauses in civil law is vital, more important than in other branches of law. Thanks to them gradual transformation of law is possible, without the need of revolutionizing it[7]. The use of the general clauses is therefore not a proof of the lawmaker's defeat. Moreover, with the dynamics of changes in the modern world and the development of science as well as the exacerbation of both social and moral conflicts their use will likely be more common. The problem is omnipresent; however, how should we apply this rule?[8] French jurists until nowadays have been

---

[2] Article 6 of the Code civil – On ne peut déroger, par conventions particulières, aux lois qui intéressent l'ordre public et les bonnes moeurs.

[3] P. A. Fenet, *Recueil des travaux préparatoires du Code civil*, t. 1, Paris 1836, p. 171.

[4] J. Bédier, *Les principes de la législation française sur le maintien de l'ordre public*, Paris 1938, p. 8.

[5] *Kodeks zobowiązań z dnia 27 października 1933 z przepisami wprowadzającymi i dokładnym indeksem alfabetycznym*, Lwów 1934.

[6] A. Olejniczak, Z. Radwański, *Zobowiązania – część ogólna*, Warszawa 2012, p. 130.

[7] M. Safjan, *Klauzule generalne w prawie cywilnym*, „*Państwo i prawo*" 1990, no. 11, p. 51.

[8] Ibidem, p. 52–53.

inspired by the philosophy and the ideas of French revolution, that is liberty, equality and fraternity. The Code civil has been a binding legal act for more than 200 years and its provisions have not been changed often. The regulations of the Code of Napoleon are very concise and the role of the jurisprudence is to adjust the law to different circumstances. *A code, even the most complete is never finished, because in front of the court there appears thousands of unexpected situations. Bills once written stay like they are, in opposition to humans, which act all the time and the effect of this action are new circumstances, impossible to predict by law and it is up to the judge to solve it*[9]. Due to the economic interventionism of the French state, courts must be given much authority in order to deal with the existing problems[10]. French society and legislator are more eager than Polish in authorizing the judges to develop and establish rules, what assimilates them be to precedents in common law. As a result, the Code civil does not have to be amended so often; it is up to the judges to decide in which special circumstances the provision is contradictory to the law. Despite the common use of the clause of ordre public in legal practice, there is no consensus among the legal scholars in the field of its definition[11].

Ordre public is a boulder where links of the authority and the citizens are united by legality, security and liberties[12].The term is frequent in all branches of French civil law, very strongly influencing the family law, e.g. the obligations between spouses have the character of *iuris cogentis* and it

[9] Un code, quelque complet qu'il puisse paraître, n'est pas plutôt achevé, que mille question inattendues viennent s'offrir aux magistrats. Car les lois une fois rédigées demeurent telles qu'elles ont été écrites. Les hommes, au contraire, ne se reposent jamais; ils agissent toujours: et ce mouvement, qui ne s'arrête pas, et dont les effets sont diversement modifiés par les circonstances, produit, à chaque instant, quelque combinaison nouvelle, quelque nouveau fait, quelque résultat nouveau. [after:] J.-E.-M. Portalis, *Discours préliminaire du premier projet de Code civil*, 1801, digital edition 2004, p. 17, tłum: Ewelina Rogalska.

[10] M. Olechowski, *Porządek publiczny jako ograniczenie swobody umów,* w *Państwo i prawo*, 1999, no. 4, p. 63.

[11] Philippe Malaurie counted 22 definitions in the doctrine, adding also his 23rd. [after:] J. Ghestin, *Traité de droit civil. La formation du contrat*, Paris 1993, p. 85 J. Ghestin claims that the issue of public order is "an issue especially difficult to define" *(une notion particulièrement fuyante).* [after:] M. Olechowski, *Porządek publiczny jako ograniczenie swobody umów,* in *Państwo i prawo*, 1999, no. 4, p. 63.

[12] A. Benedetti, C.-L. Foulon, *L'ordre républicain dans les circonstances exceptionnelles,* Paris 2015, p. 1.

is impossible to derogate the regulations of public law by the conventions in nuptial agreements[13]. Before the creation of the Code civil the ordre public term was associated with public law. Public laws were believed to be the instrument by which it was possible to defend and promote the values and interests structuring the social organisation[14]. In civil law ordre public sets the limit of actions of individuals in this what could be called as public policy or common interest[15]. Traditionally the term ordre public is defined as good order, safety, security and public health[16]. Ordre public has always the same function: to limit the particular wills and the freedom[17]. During 200 years of being in force the clause has evolved. The effect of that is its broader understanding, since within years its scope has come outside the traditional conceptualization. Ordre public in current understanding refers to the economy and its aim is to protect the weaker party, often the consumer. Ordre public enables intervention into an agreement, to make it more just – this is the case of protection of the private interest. Another function of the ordre public is adjusting the economic situation of contracts in order to align it with the common good (the protection of competition, monetary evaluation, etc.)[18]. With developing market and legal regulation the notion of ordre public keeps evolving[19].

In French law jurisprudence has developed a number of cases to which the clause may be applied which shall be presented in the article. It is against the public policy to limit or alienate one's liberty of marriage as it is an individual right of a person[20]. A member of a civil registry has a right to deny the registration of a marriage between a French citizen and a foreigner if the previous union has not been dissolved, as a bigamy

[13] C. Duard-Berton, *L'ordre public dans le droit de famille*, Paris 2002, p. 339.

[14] G. Pignarre, *Et si on parlait de l'ordre public (contractuel)?*, [in:] *Revue des contrats* – 01/01/2013, numéro 1, p. 251, [after:] database Lextenso, date of access: 07.01.2017.

[15] J. Bédier, *Les principes de la législation française sur le maintien de l'ordre public*, Paris 1938, p. 8.

[16] T. Pez, *L'ordre public économique* [in:] *Les nouveaux Cahiers du Conseil constitutionnel* – 01/10/2015, numéro 49, p. 43 [after:] Lextenso databate, date of access: 07.01.2017.

[17] Ibidem.

[18] R. Trzaskowski, *Granice swobody kształtowania treści i celu umów obligacyjnych. Art. 353.1 KC*, Zakamycze 2005, p. 144–146.

[19] B. Bury, *L'ordre public bancaire et financier: quelle vision?*, [in:] *Gazette du Palais* – 22/07/2014, numéro 203, p. 3, [after:] Lextenso database, date of access: 07.01.2017.

[20] Paris, 30 avr. 1963: D. 1963, [after:] Dalloz database, date of access: 07.01.2017.

is prohibited under French law[21]. In a joint ownership of an apartment, each co-owner is entitled to dispose and freely enjoy his lot provided that the destination of the immobility and the rights of other co-owners are not affected. If a condition of non-concurrence is inserted into statutes of co-ownership, then this regulation of the agreement is invalid[22]. The freedom of employment is a vital value in French law, based on the ideas of the Declaration of the Rights of Man and of the Citizen and it can be limited by establishing a non-competition clause in employment agreements only if it is necessary for a protection of legitimate interests of a given enterprise, limited in time and space[23].

Article 6 of the Code civil is a general regulation of ordre public in French law; there is also a separate provision about the relevance of ordre public in contract law. In 2016 there was the greatest reform of the law of obligations in France which amended 300 articles of the Code civil. Before the reform Article 1131 of Code civil stated that the obligation without a cause, or on a false cause, or on an illegal clause can have no effect[24] whereas Article 1133 of Code civil detailed that the cause is unlawful, when it is prohibited by law, when it is contrary to good morals or ordre public[25]. Since 1st October 2016 the regulation of freedom of contract has been directly stated in the Code civil (the creators of the code believed that the freedom of contract is the general principle with a sole need of formulating the exceptions – art. 6)[26]. Nowadays the rule is stated directly in the Article 1102 of Code civil: everyone is free to contract or not to contract, to choose the contractual party, and to determine the content and the form of the contract within the limits fixed by the law. The freedom of contract does not allow the derogations from the rules of ordre pub-

[21] Civ. 1re, 19 oct 2016, numéro 15-50.098 P.

[22] Civ 3e, 11 mars 1971, JCP 1971. II. 16722, [after:] Dalloz database, date of access: 07.01.2017.

[23] Soc. 10. Juill. 2002: Bull. Civ. V numéro 239 *(arrêts 1 et 3),* [after:] Dalloz database, date of access: 07.01.2017.

[24] Art. 1131 – L'obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet.

[25] Art. 1133 – La cause est illicite, quand elle est prohibée par la loi, quand elle est contraire aux bonnes moeurs ou à l'ordre public.

[26] P. Leclerq, P. Valory, *Synthèse – ordre public et bonnes moeurs*, database Jurisclasseur, date of access: 07.01.2017.

lic[27]. The contract cannot derogate the rules of ordre public either by its stipulations or purpose, no matter whether parties have knowledge about it or not[28]. The previous regulations of the Code civil had its source in the philosophy of Enlightenment, French revolution and the multiple legal systems existing in the time of *ancien régime*, completely different than that we live in, so it was clear that the Code civil definitely needed to be amended. The aim of the reform was simplification and modernisation of law of obligations and in the same time protection of the weaker party of an agreement. But is it possible to conciliate so different ideas? Difficult to say; the reform gives judges a lot of authority and it is even stated that parties may be afraid of the judge *(peur du juge)* as it is not known what the verdict might be. The legislator was inspired by the solutions of American common law[29]. It should not be forgotten that the French lawmaker has the immense respect for the jurisprudence which was not changed; so its presentation is an indispensable source of information.

There is a number of judgements concerning the clause of ordre public. It is undoubtful that the freedom of contract always concerned four aspects: freedom to engage into a contract, to choose the person with whom the contract will be entered into, to determine the content of the contract and its form[30]. In the legal doctrine there were the propositions of including into the Code civil the second dike for the freedom of contract which would be fundamental rights and liberties. However, it would be a hazardous decision; how to apply the rule of proportionality in this context[31]? The freedom of contract may be the subject of limitations justified by the general interest and proportionate to the objective pursued[32]. One

[27] Art. 1102 – Chacun est libre de contracter ou de ne pas contracter, de choisir son cocontractant et de déterminer le contenu et la forme du contrat dans les limites fixées par la loi. La liberté contractuelle ne permet pas de déroger aux règles qui s'intéressent l'ordre public.

[28] Art. 1162 – Le contrat ne peut déroger à l'ordre public ni par ses stipulations, ni par son but, que ce dernier ait été connu ou non par toutes les parties.

[29] M. Memu, *La réforme du droit des contrats et le monde des affaires: une nouvelle version du principe* comply or explain!, p. 109–113, [in:] *Gazette du Palais. Recueil bimestrel 2016*, 1 janvier février.

[30] Code civil 2017, thirty sixth edition, with annotations by Laurent Leveneur, [after:] Dalloz database, date of access: 07.01.2017.

[31] Ibidem.

[32] Crim. 14 avr. 2015, numéro 14-86.347 P, [after:] Dalloz database, date of access: 07.01.2017.

of the aims of the existence of ordre public is the security of the legal system and legal certainty; but if there is a conflict, what is more important: the legal certainty or the justice and the just solution of the problem? The judge should conform to the already existing jurisprudence due to the legal certainty[33]. In situations where there is a new regulation which could affect negatively existing contractual situations, the regulatory authority may issue transitional measures implied by the new regulation in accordance with the security of the legal system[34]. It is possible for parties renewing a credit agreement by entering into a new contract to modify the initial conditions of the contract or the mandatory conditions they agreed to[35]. If the candidate promises to the political party that in the case of his victory he shall pay back the money spent on his election campaign this settlement is invalid[36]. The agreement in which a woman undertakes to conceive, bear a child and to abandon it at birth is contrary to ordre public, even if she agreed to do it gratuitously[37]. However, what should we do in a case of conflict of laws? Two people who could not have their own children due to excessive obesity became biological parents in accordance with American law thanks to the surrogacy. They asked for the registration of their parenthood in the act of birth in French consulate and their appeal was denied. However, we should not forget that the surrogacy is not contrary to international private law and everybody should have a right to a private and family life. The judgement took this values into account[38]. The tombs and the soil on which they are placed, no matter if it is a public or a private cemetery, are outside the rules of the law of property and the free disposal of them is impossible. Their value cannot be measured in money[39].

[33] Civ. 2e, 8 juill. 2004 RGDA 2004.933, [after:] Dalloz database, date of access: 07.01.2017.

[34] CE, ass., 24 mars 2006, sté KPMG: D. 2006. 1224, [after:] Dalloz database, date of access: 07.01.2017.

[35] Com. 18 mai 2005: Bull. civ. IV, numéro 106., [after:] Dalloz databse, date of access: 07.01.2017.

[36] Civ. 1re, 3 nov. 2004: Bull civ. I numéro 237; D. 2004. IR 3037, [after:] Dalloz database, date of access: 07.01.2017.

[37] Cass., ass. plén., 31 mai 1991: Bull. civ. numéro 4; R., p. 247, [after:] Dalloz databse, date of access: 07.01.2017.

[38] M. Domingo, *Filiation par mère porteus: entre l'ordre public international et le droit à une vie de famille,* commeted judgement: Cour de cassation 1ère chambre civile, avr. 2011, numéro 10-19053 [in:] *Gazette du Palais* – 12/05/2011, numéro 132, p. 13, [after:] Lextenso database, date of access: 06.01.2017.

[39] Civ. 11 avr. 1938: DH 1938. 321, [after:] Dalloz database, date of access: 07.01.2017.

How does the clause of ordre public operate in Polish international private law? The functioning of the institution in Polish legal system is not unusual as the clause of ordre public is in common use in most of legal systems in their international private law regulations. An appliance of foreign law's provisions may be frequently shocking from the point of view of the most basic values of international private law. Ordre public acts as a security breach; it protects the legal system from difficult to accept results of putting foreign legal norms into use[40]. While guarding the national law, it also has a function of controlling other legal systems. Some claim that it acts as the warden of the sovereignty of the state[41]. It is regulated in the Article 7 of the international private law: "the foreign law does not apply, if the effects of its appliance would be contrary to the fundamental principles of the ordre public of the Republic of Poland". The Polish legislator decided not to ban the legal norms contrary to the Polish public policy but the consequences of their appliance, if they are contradictory to the values of the Polish state[42].

The most actual issue is the definition of a marriage, which may vary in some states (for instance due to the presence of homosexual marriages)[43]. A marriage as a union of a man and a woman is protected by Article 18 of the Polish constitution. The current Polish bill is from 2011; during works on the act there was a proposition of creating the second part of the Article 7 of Polish international private law: especially the provisions of foreign law concerning the unions of partners of the same sex are not applied. This regulation could be a valuable instruction for the courts[44].

The aim of the ordre public is not the protection of an individual party who is the object of a judgement of a foreign court, but the protection of a whole legal system of the state that would apply the judgement. Ordre public refers only to fundamental rules of the legal system, not all

---

[40] M. Pazdan, *Prawo prywatne międzynarodowe*, Warszawa 1996, p. 70.

[41] A.W. Wiśniewski, *Klauzula porządku publicznego jako podstawa uchylenia wyroku sądu arbitrażowego (ze szczególnym uwzględnieniem stosunków krajowego obrotu gospodarczego)*, „*Kwartalnik ADR*", number 2 (6)/2009, p. 122.

[42] M. Pazdan, *Prawo prywatne międzynarodowe*, Warszawa 1996, s. 71.

[43] M. Pazdan, *Nowa ustawa o prawie prywatnym międzynarodowym*, „*Państwo i prawo*" 2011, number 6, pp. 27–28.

[44] A. Nowicka, *Klauzula porządku publicznego w prawie międzynarodowym prywatnym,* [in:] *Współczesne wyzwania prawa międzynarodowego prywatnego* (ed. J. Poczobut), Warszawa 2013, p. 204.

of them[45]. Do Polish courts nowadays make a proper usage of the ordre public provision? The example could be the case in which an American court condemned to plaintiffs the punitive damages in the amount of 750,000 dollars. The effect of the appliance of this ruling would be in opposition to the principles of Polish law and constitution, as in civil law systems the damages have to be proportional to the injury inflicted by the doers. In this case Polish court refused to apply the American judgement[46]. In another case the court ruled out that the transcription of an act of birth in which two women are appointed as parents of a child, is impossible, as it is contrary to the Polish Family code, according to which solely a man and a woman can be parents. The court did not agree with the claims of the women, according to which the law should adapt to the changing situation in the world[47]. The Polish administrative court refused the registration of a civil (homosexual) union in the act of birth, referring to the rules of ordre public and the jurisprudence of European Court of Human Rights, allowing the states have the right to limit the citizens the access to homosexual unions (Schalk and Kopf vs Austria, 24.06.2010)[48].

This proves the importance of the general clauses and their relevance in the contemporary reality. However, we should never forget that their aim should not be the destruction of the fundamental constructions of positive law but the search for new solutions, in accordance with the most important principles of both the ordre public and the democratic society[49]. In French legal regime this principle of law is fully applied, making it flexible and possible to adapt to various situations. Polish legislator is not eager to use the clause in the domain of international private law, limiting its appliance to very few cases. As a result even if the ordre public would exist until nowadays in Polish Civil code, it is unlikely that its use could even partially be comparable to the role of the construction in French law and that the institution would act as one of the basic elements of Polish law. It is difficult to tell what way of thinking about law is better; in Polish legal culture we value more the predictability of the verdict, whereas the French prefer to give

[45] SN, 9.12.2010, IV CSK 224/10

[46] I CSK 697/12

[47] II SA/Gl 1157/15

[48] NSA, 19.06.2013, II OSK 475/12

[49] M. Safjan, *Klauzule generalne w prawie cywilnym*, za *Państwo i prawo* 1990, no. 11, p. 59.

greater authority to a judge who in consequence can state verdicts more freely than his counterpart in Poland.

Bibliography

1. Bédier J., *Les principes de la législation française sur le maintien de l'ordre public*, Paris 1938.
2. Benedetti A., Foulon C.L., *L'ordre républicain dans les circonstances exceptionnelles,* Paris 2015.
3. Bury B., *L'ordre public bancaire et financier: quelle vision?*, [in:] *Gazette du Palais* – 22/07/2014, numéro 203, p. 3.
4. Code civil 2017, thirty sixth edition, with annotations by Laurent Leveneu.
5. Domingo M., *Filiation par mère porteuse: entre l'ordre public international et le droit à une vie de famille,* commeted judgement: Cour de cassation 1ère chambre civile, avr. 2011, numéro 10-19053 [in:] *Gazette du Palais* – 12/05/2011, numéro 132, p. 13.
6. Duard-Berton C., *L'ordre public dans le droit de famille*, Paris 2002.
7. Fenet P.A., *Recueil des travaux préparatoires du Code civil*, t. 1, Paris 1836.
8. *Kodeks zobowiązań z dnia 27 października 1933 z przepisami wprowadzającymi i dokładnym indeksem alfabetycznym*, Lwów 1934.
9. Leclerq P., Valory P., *Synthèse – ordre public et bonnes moeurs*, [after] Jurisclasseur database.
10. Memu M., *La réforme du droit des contrats et le monde des affaires: une nouvelle version du principe* comply or explain!, p. 109-113, [in:] *Gazette du Palais. Recueil bimestrel 2016*, 1 janvier février.
11. Nowicka A., *Klauzula porządku publicznego w prawie międzynarodowym prywatnym* [in:] *Współczesne wyzwania prawa międzynarodowego prywatnego* (ed. J. Poczobut), Warszawa 2013.
12. Olechowski M., *Porządek publiczny jako ograniczenie swobody umów,* in *Państwo i prawo*, 1999, no. 4.
13. Olejniczak A., Radwański Z., *Zobowiązania – część ogólna*, Warszawa 2012.
14. Pazdan M., *Nowa ustawa o prawie prywatnym międzynarodowym*, w: *Państwo i prawo* 2011, no. 6.
15. Pazdan M., *Prawo prywatne międzynarodowe*, Warszawa 1996.
16. Pez T., *L'ordre public économique* [in:] *Les nouveaux Cahiers du Conseil constitutionnel* – 01/10/2015, numéro 49, p. 43.

17. Pignarre G., *Et si on parlait de l'ordre public (contractuel)?,* [in:] *Revue des contrats* – 01/01/2013, numéro 1, p. 251.
18. Portalis J.E.M., *Discours préliminaire du premier projet de Code civil*, 1801, digital edition 2004.
19. Safjan M., *Klauzule generalne w prawie cywilnym*, in *Państwo i prawo* 1990, no. 11.
20. Sójka-Zielińska K., *Kodeks Napoleona. Historia i współczesność*, Warszawa 2008.
21. Trzaskowski R., *Granice swobody kształtowania treści i celu umów obligacyjnych. Art. 353.1 KC*, Zakamycze 2005.
22. Wiśniewski A.W., *Klauzula porządku publicznego jako podstawa uchylenia wyroku sądu arbitrażowego (ze szczególnym uwzględnieniem stosunków krajowego obrotu gospodarczego)*, „*Kwartalnik ADR*", no. 2 (6)/2009.

Legal acts

23. Prawo międzynarodowe publiczne (international private law)
24. Code civil
25. Kodeks zobowiązań (Code of obligations)

Judgements of Polish courts

26. SN, 11.10.2011, I CSK 697/12
27. WSA z Gliwic, 6.04.2016, II SA/Gl 1157/15
28. NSA, 19.06.2013, II OSK 475/12
29. SN, 9.12.2010, IV CSK 224/10

Judgements of French courts

30. Paris, 30 avr. 1963
31. Civ. 1re, 19 oct 2016, numéro 15-50.098 P
32. Civ 3e, 11 mars 1971, JCP 1971. II. 16722
33. Soc. 10. Juill. 2002 : Bull. Civ. V numéro 239 *(arrêts 1 et 3)*
34. Crim. 14 avr. 2015, numéro 14-86.347 P
35. Civ. 2e, 8 juill. 2004 RGDA 2004.933
36. CE, ass., 24 mars 2006, sté KPMG: D. 2006. 1224
37. Com. 18 mai 2005: Bull. civ. IV, numéro 106
38. Civ. 1re, 3 nov. 2004: Bull civ. I numéro 237; D. 2004. IR 3037
39. Cass., ass. plén., 31 mai 1991: Bull. civ. numéro 4; R., p. 247
40. Civ. 11 avr. 1938: DH 1938. 321

Databases

41. Jurisclasseur: https://www.lexis360.fr/Home.aspx?AuthReturn=true&rsid=home1_, date of access: 07.01.2017.
42. Dalloz: http://www.dalloz.fr.proxy.scd.u-psud.fr/, date of access: 07.01.2017.
43. Lextenso: https://www-lextenso-fr.proxy.scd.u-psud.fr/, date of access: 07.01.2017.

Ewelina Rogalska – the graduate of law on Adam Mickiewicz University in Poznań, studied for a year in French on Université Paris-Sud. Her Master thesis was written under supervision of prof. dr hab. Wojciech Dajczak. Interested in Roman law, comparative law and French civil law.