

ADAM BALICKI

CIVIL LAW CONTRACTS AT SCHOOL – AN OUTLINE

1. GENERAL REMARKS

A contract constitutes the most important form of legal action. It is a basic element regulating the circulation of goods, services and money. A contract becomes binding by the unanimous declaration of will of the parties signing it. Contracts also have widespread application in the sphere of social relations. The rules concerning the conclusion of contracts are included in Art. 66-72¹ of the Civil Code.² The most fundamental rule for the interpretation of contracts is expressed in Art. 65 of the Civil Code, according to which a declaration of will should be interpreted as it is required by principles of community life and common customs. In contracts we should analyse the unanimous intention of the parties and the aim of the contract rather than its literal meaning. The criterion of principles of community life means that we need to interpret declarations of will in such a way that they conform with ethical and moral principles observed in society. What should be understood by the unanimous intention of the parties is a shared consensus of opinion relevant for the given type of legal action resulting from the contract itself as well as beyond it. The aim of a contract is an economic aim or other aim that the parties wanted to achieve by the conclusion of a given contract.³ Pursuant to Art. 56 of the Civil Code, the legal effect derived from the

ADAM BALICKI – PhD, Associate Professor at the Chair of Civil Law and Civil Proceedings, Off-Campus Faculty of Legal and Economic Science of the John Paul II Catholic University of Lublin at Tomaszów Lubelski; address for correspondence: ul. Lwowska 80, 22-600 Tomaszów Lubelski.

¹ Z. RADWAŃSKI, *Prawo cywilne – część ogólna*, Warszawa 2007, pp. 290-291.

² The Act of 23 April 1964 – Civil Code (“Dziennik Ustaw” [Journal of Laws] 1964, No. 16, item 93 as amended).

³ S. RUDNICKI, [in:] *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warszawa 2007, pp. 292-294.

conclusion of a contract stems from the language expressed in the contract, the consequences of a given act, the principles of community life and established customs.

The parties entering into a contract may use a contract in which the *essentialia negotii* are covered by the regulations of an act. This allows the parties to refer to the said regulations while concentrating on the specific obligation relations which apply to the interests of the parties. These are so-called nominate contracts.⁴ The parties may also enter into a contract whose content is not regulated by any of the above mentioned forms of contract. Such a contract is described as an innominate contract. The legal basis for contracts is provided by Art. 353 of the Civil Code, according to which the parties of a contract may formulate a legal relationship at their own discretion as long as the aim of a contract is not contrary either to the attributes of the relationship or the act and principles of community life. The rule set forth in this article introduces the principle of freedom of contracts. As it was pointed out by Tadeusz Wiśniewski, drawing on the above mentioned article and other provisions of the Civil Code we can come to the conclusion that the principle of freedom of contracts is connected with four basic features:

- freedom of concluding or not concluding a contract,
- the possibility of choosing a contracting party,
- freedom to formulate the content of a contract (however with some limitations),
- freedom of the parties to choose the form of contract.⁵

Civil law doctrine also mentions so called mixed contracts. They are contracts whose elements may include the content of nominate contracts as well as that of innominate contracts. Apart from the above mentioned category we can still distinguish contracts whose content will include some element of novelty with regard to nominate contracts. One such example may be a „know-how” contract⁶.

As can be seen, the Polish legislator has provided the parties to a contract with numerous possibilities for formulating liability. Any limitations in this respect are to assure the compliance of the parties’ activities with principles of community life and the socio-economic purpose of civil law.

⁴ W. CZACHÓRSKI, *Zobowiązania. Zarys wykładu*, Warszawa 2002, p. 132.

⁵ T. WIŚNIEWSKI, [in:] *Komentarz do kodeksu cywilnego. Księga trzecia. Zobowiązania* t. I, ed. G. BIENIEK, Warszawa 2007, p. 19.

⁶ W. CZACHÓRSKI, *Zobowiązania*, p. 133; more on this type of contract cf. B. GAWLIK, *Umowa know-how. Zagadnienia konstrukcyjne*, Warszawa–Kraków 1974.

2. SUBJECTS AUTHORISED TO ENTER INTO CONTRACTS ON BEHALF OF SCHOOLS

Pursuant to article 5 of School Education Act of 7 September 1991⁷ schools or other educational institutions may either be public (state) or non-public. They may be established and run by local government units and other legal or natural persons. Local government units may only establish and run public schools or other educational institutions which are public. The Act also makes it possible to establish and run schools by ministers in charge of internal affairs, Minister of National Defence, Minister of Culture and National Heritage, Minister of Agriculture, Minister of Environment and Minister of Justice. Above all, these are local government units which are the main body that runs the schools. The gradual process of local government taking over responsibility for education within its territory was connected with self-government reform. This process was finished in 1999. Pursuant to article 5 section 7 of the earlier mentioned Act, a body which runs a school or an educational institution is responsible for its activity. In particular we can distinguish the following tasks of such a body:

- provision of certain conditions to schools and educational institutions, including safe and hygienic conditions for learning, education and proper care,
- renovating school buildings and carrying out investment tasks in this respect,
- provision of administrative, financial and organisational service for schools and institutions,
- provision of didactic aids and equipment necessary to fulfil requirements, meet various curriculum standards, administer tests and examinations and perform other statutory tasks.

In this context we should point out that in order to become a party of a liability relation and thus be able to enter into a civil law contract, one should have the status of a legal person. Pursuant to Art. 33 of the Civil Code such status is held by State Treasury and in particular organizational units for which such status is granted by provisions of the law. The schools themselves do not have such a status. Therefore, in order to be able to take part in civil law transactions and thus to be able to enter into various contracts, a body which runs a school must be a unit holding the status of a legal person. In accordance with the regulations of Polish Civil Code the following institutions fulfil the condition of having the status of a legal person:

- local government units,

⁷ “Dziennik Ustaw” [Journal of Laws] 2004, No. 256, item 2572, as amended.

- associations with the exception of common (usual) associations,
- foundations,
- commercial companies and partnerships.⁸

The regulations of Polish Civil Code also identify a form of the so-called defective legal person. Pursuant to article 331 of the Civil Code to this form belong those organizational units which are not a legal person but which are, by the Act, granted capacity to make legal actions. Such units, as well as civil law partnerships, cannot be a body which runs a school.⁹ In view of such a legal framework and within the meaning of civil law, school property belongs to the body which runs a given school. And as can be seen, the body which runs schools is entitled to enter into contracts on behalf of a school.

A school is managed by a head. School heads are recruited on the basis of an open competition by the body running the school. There is no obligation to hold such an open competition in the case of schools and educational institutions run by a natural person. A school head is a body which has great powers.¹⁰ His competences are in particular outlined in Art. 39 of the School Education Act. According to this regulation a school head:

- manages the school (institution) and represents it externally,
- exercises pedagogical supervision,
- takes care of pupils and for their harmonious psychological and physical development through various pro-health activities,
- implements the resolutions of the school council or the teachers' council (undertaken in accordance with their competencies),
- is in charge of financial affairs, as determined by a school council approved financial plan and is responsible for their proper use; a school head may also organise administrative personnel,
- co-operates with higher education and teacher training institutions,
- is responsible for the organisation and implementation of the tests and external exams in his/her school,
- provides background within a school or educational institution for activity of various educational and charitable organisations,
- may take a decision to dismiss a student from school in situations foreseen by the school statute.

⁸ M. PILICH, *Ustawa o systemie oświaty. Komentarz*, Warszawa 2008, p. 49.

⁹ *Ibidem*, pp. 49-50.

¹⁰ D. KURZYNA-CHMIEL, *Podstawy prawne i organizacyjne oświaty. Prawo oświatowe w zarysie*, Warszawa 2009, p. 130.

The school head, being the manager of the institution employing teachers and non-teaching staff, decides also on the following matters:

- employment and dismissal of teachers and non-teaching staff,
- discipline and reprimands,
- proposals concerning awards, rewards and other honours for teachers and non-teaching staff after consultation with the teachers' council and the school council.

The regulations of the School Education Act do not provide for a situation in which a school head may enter into civil law contracts on behalf of a school. This also applies to agreements for performance of a specific task. As was mentioned earlier, a school does not have the status of a legal person. Such status is held only by a body running the school. However, for practical reasons, a school body should authorize a school head to enter into such contracts on behalf of a school. From a point of view of a proper application of the law, it is advisable that a body running a school should appropriately authorise school heads in this respect.¹¹ As far as labour law actions are concerned, a school head is not restricted in any way.¹²

As can be seen it is, first and foremost, a school running body which is authorised to enter into civil law contracts on behalf of schools. However, the actual running of a school belongs to the competence of a school head. Schools do not have the status of a legal person, and thus the legal competence provided by the Act for school heads does not allow them to enter into civil law contracts. However, practical reasons point to the need of authorizing school heads in this respect. In the case of agreements for performance of a specific task this is highly justifiable, since the character of such a contract involves actions which are more suited to the school head's current tasks. The situation is different in the case of investment activities, e.g., renovation. Such a financial charge justifies the interference of a school running body.

3. THE POSSIBILITY OF ENTERING INTO CIVIL LAW CONTRACTS EMPLOYMENT RELATIONSHIPS

As it was mentioned earlier, a school head is the body which employs school workers. Teachers are, among school workers, the largest group of employees. In

¹¹ M. PILICH, *Ustawa o systemie oświaty*, pp. 425-426.

¹² Pursuant to article 3 of the Law of 26 June 1974 – Labour Code (“Dziennik Ustaw” [Journal of Laws] 1998, No. 21, item 94 as amended) – organisational unit is an employing party even if it does not have the status of a legal person, a natural person may also be an employing party employing if he or she employs some employees.

public schools, employment conditions are set out in the Act of 26 January 1982 – known as the Teachers’ Charter.¹³ It serves as the labour regulations for teachers. In non-public schools, teachers are employed pursuant to Labour Code regulations. Apart from teachers, we also find administration and other staff employees among school workers. Their employment is based on employment contracts which are regulated by the laws of the Labour Code.

Pursuant to article 10 section 1 of the Teachers’ Charter, an employment relationship is established with a teacher on the basis of an employment contract or an appointment. The regulations of the Teachers Charter introduce a new motivational career system, comprised of four grades: junior teacher, contract teacher, appointed teacher and certified teacher. Moreover, there is also one honorary professional title – professor of education. The given grade is taken into account during the employment process. Junior teachers are employed for the period of one school year¹⁴ whereas, pursuant to article 10 section 4 of the Teachers Charter, an employment relationship with a contract teacher is established on the basis of an employment contract for an indefinite time unless there are conditions mentioned in section 7 of this article that exist. Among these conditions, we can distinguish particular organizational conditions in a school and supply teaching. In such conditions, employment is based on an employment contract for a definite time. As far as appointed and certified teachers are concerned, the employment relationship is established on the basis of an appointment. This may take place as long as a teacher:

- holds Polish citizenship, though this requirement is not applicable to citizens of EU countries, citizens of Swiss Confederation or citizens of member countries of The European Free Trade Agreement – the parties to the European Economic Area contract has full legal capacity and uses full public rights,
- is a teacher against whom no criminal or disciplinary proceedings are pending including incapacitation proceedings,
- has not been sentenced for an offence committed intentionally,
- holds qualifications required of teachers,
- and there are conditions in a school for full time employment of a teacher for an indefinite time.

Art. 10 of the Teachers’ Charter is the key regulation setting out the basis of establishing an employment relationship with a teacher.¹⁵ The most advantageous

¹³ Dziennik Ustaw” [Journal of Laws] 2006, No. 97, item 674 as amended.

¹⁴ Pursuant to article 64 of the Law on the system of education, school year commences on September 1 and ends on August 31 the following year.

¹⁵ M. SZYMAŃSKA, [in:] *Ustawa Karta Nauczyciela. Komentarz*, Warszawa 2009, p. 128.

form of employment is the one based on an appointment. Employment on this basis is primarily to guarantee employment stability.¹⁶

As we can see, the regulations of the Teachers' Charter do not allow employment of a teacher in a public school on the basis of a civil law contract.

The regulations of the Teachers' Charter are of limited application to teachers working in non-public schools. The basis for their employment, regardless of their career advancement grade, is a contract for a definite or an indefinite time. In this situation, it is the nature of a job that determines whether an agreement for performance of a specific task can be concluded with a teacher. It should be emphasized that not all jobs can be performed on the basis of a civil law contract. It is not acceptable to use both the contracts and agreements as a replacement for each other. An employment relationship has been defined in Art. 22 of the Labour Code where according to the aforementioned provision, by entering into an employment relationship an employee commits himself or herself to completion of the specific kind of work to the benefit of an employer in a place and time determined by an employer and under the employer's leadership. As it was pointed out by T. Liszcz, an employment relationship in terms of Polish labour law has many specific features which differentiate it from the obligation relationship of employment arising from civil law contracts. Some of these features include the following:

- the employee's obligation is the personal performance of work and not a specific result, and therefore it is an agreement for due diligence,
- the employee is subordinate to the employer as far as specific tasks resulting from the employment relationship are concerned,
- work is performed with the use of tools and materials that belong to the employer,
- the result of the work is appropriated by the employer,
- the employer suffers economic and social risk,
- the employment relationship is a permanent obligation, obligatorily paid, of a strictly personal nature of the employee's service.¹⁷

As the quoted regulation says, it is the specificity of a teacher's work that demands they be employed under a contract of employment. Employment on the basis of an agreement for the performance of a specific task, or any other civil law contract (e.g. mandatory contract) cannot include any features of a contract of

¹⁶ A. DUBOWIK, *Wzmożona trwałość stosunku pracy z mianowania*, „Praca i zabezpieczenia społeczne” 2007, No. 9, p. 18; J. STELINA, *Charakter prawny stosunku pracy z mianowania*, Gdańsk 2005, p. 161.

¹⁷ T. LISZCZ, *Prawo pracy*, Warszawa 2007, pp. 100-101.

employment. Such a situation would result in the employing party's obligations pursuant to Art. 281 Point 1 of the Labour Code.

School administrators and non-teaching staff are placed under similar conditions. According to Article 5d of the Act on the System of Education, the legal status of employees in schools run by local self-government authorities is regulated by laws concerning local self-government employees.¹⁸ Non-teaching staff of a school should, on principle, be employed on the basis of an employment contract.

As the above suggests, the kind of work performed by a teacher is typical of an employment relationship, hence a teacher cannot be employed solely on the basis of a civil law contract. It concerns also other school employees. Moreover, teachers employed by state schools are under the regulations of the Teachers' Charter, which explicitly state that a teacher is employed either on the basis of a contract of employment or by appointment. It is legal, however, to enter into an agreement for the performance of a specific task (or any other civil law contract) with a teacher or any other school employee in addition to their contract of employment or appointment. This shall apply to an extra task. In the case of an agreement for the performance of a specific task, it will be an agreement to perform a specific task. For that reason it must determine the specific type of task. Such an agreement can concern: the preparation of an original teaching curriculum, the organisation of the anniversary of the establishment of the school, drafting an application for the acquisition of European Union funds, organising a training course for other teachers of the school, etc. The specificity of school work will justify, in such cases, entering into an agreement for the performance of a specific task rather than a mandate contract.

The mandate contract is regulated by Art. 734-751 of the Civil Code. A person entering into a mandate contract assumes the obligation to perform a specific civil legal action for the contracting party. According to Art. 750 of the Civil Code, however, regulations concerning the mandate contract are used, respectively, for agreements to provide services which are not otherwise regulated. Unlike under the agreement for the performance of a specific task, the employee should perform the task personally and should follow the guidelines for performing the task as prepared by the employer. Should the employee receive no such guidelines, they should consider the subject matter of the contract, the law, and act with due diligence. The employee can use a third party only in unusual circumstances.¹⁹ The mandate contract includes the performance of a specific task

¹⁸ The Act of 22 March 1990 on local government employees ("Dziennik Ustaw" [Journal of Law] 2001, No. 142, item 1539 as amended).

¹⁹ K. KOLAKOWSKI, [in:] *Komentarz do kodeksu cywilnego*, pp. 387-388.

without achieving a specific result, and as such it is, effectively, a contract of diligent performance, not of a result. The employer cannot demand that the service constituting the subject of the contract be performed at a specific place or time. In school circumstances, a contract of this type can be concluded with a teacher, for example, in order to organise a certain event, prepare school promotion programme or the supervision of children commuting to school, or even running the school's internet site.

As can be seen, in employment relations at school, civil law contracts cannot constitute the basic instrument for the employment of teachers. The specificity of a teacher's work meets the legal definition of an employment relationship, and hence teachers must be employed on the basis of a contract of employment, or by appointment. Civil law contracts, in turn, can be concluded with teachers in addition to employment contracts. Such civil law contracts shall concern additional tasks, outside the employment obligations of a teacher. The basic types of civil law contracts seem to be: an agreement for the performance of a specific task and the mandate contract. Of course, such contracts can be concluded also with school employees other than teachers. Thus, it is acceptable to enter into a civil law contract with a non-teacher to organise specialised activities of some kind, e.g. to organise a talk with students of the last grade on the situation on the job market, held by a specialist from the employment office. Or a lawyer can hold classes with students majoring in law.

An issue that raises doubts is the possibility to enter into civil law contracts with people holding didactic-compensatory classes as part of projects co-financed by the European Social Fund. Art. 64 Section 1 of the Act on the System of Education states that the principal forms of didactic-educational activities at school are:

- compulsory educational activities,
- additional educational activities,
- didactic-compensatory and specialised activities organised for students with problems with learning and other activities supporting the development of children and teenagers with developmental disorders,
- non-compulsory extracurricular activities,
- practical vocational training in schools with vocational education.

Pursuant to Art. 64 Section 1 of the said Act, didactic-compensatory activities for students with problems with learning and non-compulsory school activities can be held with the participation of volunteers. According to the Ministry of Education, it is acceptable to enter into a civil law contract with a teacher who is to hold additional didactic-compensatory activities. Such a situation, however, should be considered from the point of view of activities and obligations that the

teacher would have. If they should satisfy the requirements of an employment relationship, a contract of employment should be concluded with the teacher. However, if the person who holds the said activities is not under the authority or supervision of the School Head, and the person has no obligation to hold the activities, it is possible to enter into a civil law contract with the said person.²⁰

4. ENTERING INTO CIVIL LAW CONTRACTS WITH THIRD PARTIES BY SCHOOLS

As it has been already shown, in order to conclude civil law contracts, a school head must obtain authorisation to do so from the body running the school. Upon receiving such authorisation, a school head will be able to enter into any civil law contract. But the specificity of the school work will promote some types of contracts. Apart from the sales contract, the mandate contract and the agreement for the performance of a specific task will dominate.

Due to the ever-increasing threat to students' safety at Polish schools, as well as due to the danger of intoxicating substances appearing on school premises, the school can conclude a mandate contract with a company providing security services, in order to ensure the effective protection of the school. A Directive by the Minister of National Education of 19 August 2009 on the accepted forms of implementing two compulsory hours of physical education²¹ states that two compulsory hours of physical education within the weekly timetable can be organized in the following form:

- sports activities,
- recreational-health activities,
- dancing activities,
- active forms of tourism.

Such activities should take into consideration: students' health needs, interests and sports achievements, local conditions, students' place of residence, sporting traditions of the community or school, as well as available staff.

Such activities can be organised by a school as activities within the curriculum, optional as well as extra-curricular. Such a solution gives the school the

²⁰ http://www.men.gov.pl/.php?option=com_content&view=article&id=865%3Astanowisko-mi-nisterstwa-edukacji-narodowej-na-temat-moliwoci-oraz-zasad-zatrudniania-nauczycieli-szko-do-realizacji-projektow-wspofinansowanych-ze-rodkow-europejskiego-funduszu-spoecznego-&catid=87%3A-opinie-i-stanowiska-men&Itemid=106.

²¹ "Dziennik Ustaw" [Journal of Laws] 2009, No. 136, item 1116.

possibility to enter, after receiving permission from the body running the school and after being approved by the board of teachers, into a civil law contract with a third party, which will organise the said activities in the form of extra-curricular activities. In this situation, a mandate contract will be preferable as it will include organising physical education activities in a particular form. Within the contract, the school head could specify the time limit for the work, or the physical education classes, and the ways of their performance. He could not, however, define the exact hours of the activities as part of the contract. He would not exercise direct supervision, either. Of course, a detailed solution could become a subject matter of the contract. In special cases, it is also possible to enter into an unnamed contract, but then the parties have to make sure the subject matter of the contract does not meet the requirements of an employment relationship. Pursuant to the Directive of Minister of National Education of 28 August 2009 on the Realisation of Safety Activities Education,²² during summer holidays for students who completed the first grade of basic vocational schools, comprehensive schools, specialised secondary schools or technical secondary schools, it is possible to organise specialised training-recreational camps in the scope of safety, as described in regulations concerning the conditions that must be satisfied by the organiser of leisure for children and school students as well as the organisation and supervision of said leisure.²³ Thus, the school head can, also in this case, apply civil law contracts when commissioning the organisation of such a camp for students of their school to a third party, or the preparation of the camp curriculum, the supervision of students, their transport, etc.

Civil law contracts can also be used when organising children's and students' leisure as well as for the arrangement of tourist activities. Pursuant to Art. 92a of the Act on the System of Education – in time that is free from school activities for students camps and other forms of leisure may be organised. Children's and students' leisure can be organised both by schools and institutions and by natural persons, legal persons as well as organisational units without a legal personality. The organiser is obliged to provide a safe environment as well as adequate educational supervision.²⁴

²² "Dziennik Ustaw" [Journal of Laws] 2009, No. 139, item 1131.

²³ These conditions have been described in Directive of Minister of National Education of 21 January 1997 on the Conditions for Organisers of Leisure for Children and School Students and Its Organisation and Supervision ("Dziennik Ustaw" [Journal of Laws] 1997, No. 12, item 67).

²⁴ A. KRÓL, P. KUZIÓR, M. ŁYSZCZARZ, *Komentarz do ustawy o systemie oświaty*, Warszawa 2009, p. 539.

The organisation by a school of tourism and sightseeing is regulated by the Directive of the Minister of National Education of 8 November 2001 on the Conditions and Means of Organising Sightseeing and Tourism by Kindergartens, Schools and Institutions.²⁵ According to this regulation, kindergartens, schools, and institutions can organise various forms of sightseeing and tourism for their students. For the organisation of the said forms of activities, the said educational institutions can cooperate with associations and other entities whose scope of activity includes sightseeing and tourism. It can be held within curricular, optional and extracurricular activities. The organisation of tourism and sightseeing can take the following forms:

- school subject trips, initiated and realised by teachers in order to supplement the teaching curriculum of a particular subject or for related subjects;
- sightseeing-touristic trips which do not require fitness training from their participants or any specialised skills;
- sightseeing-tourist events such as: camping, contests and tournaments;
- qualified tourist events and camping trips which do not require fitness training from their participants or any specialised skills;
- away-from-home events, such as summer school, winter school, ecological school.

It is the school head's duty to designate the manager of the trip or event from among the school's qualified pedagogical employees. However, another person can be designated to act as the said manager by the head teacher. Such a person has to be of age and:

- complete a course for school trip leaders,
- be a scouting instructor;
- hold the qualifications of a tourist guide, leader or an instructor of qualified tourism or a trip courier.

For the organisation of tourism and sightseeing by a school, civil law contracts can be used in a similar scope as for the organisation of leisure. They will specifically be used for the school cooperation in the organisation of the said events with other institutions as extra-curricular activities. In such cases, the preparation of the activity, as well as providing supervision for students, can be ensured by means of agreements for the performance of specific tasks or mandate contracts concluded with relevant entities. To a lesser degree, such contracts will be applicable to the supervision or preparation of events by teachers employed by the school, as many of these activities can be qualified as falling within the range of

²⁵ "Dziennik Ustaw" [Journal of Laws] 2001, No. 135, item 1516.

the teachers' professional duties. According to Art. 42 Section 2 of the Teachers' Charter, as part of their duties, a teacher is obliged to perform didactic, educational and custodial activities, held directly with students or children or for them, as well as other activities and events resulting from the school's statutory aims, including supervisory and educational activities that take into consideration the students' needs and interests. In such a situation, a teacher shall perform activities connected with the organisation of tourism and sightseeing within their contract of employment or appointment. A civil law contract, however, shall apply in situations when other people are employed to work or to organise the said activities, or when the said activities fall outside the scope of a teacher's duties. Regarding the organisation of trips, it is essential to take into account a judgement of the Supreme Court of 6 October 1953, in which the Supreme Court stated that the completion of a established itinerary of a trip is the subject matter of an agreement for the performance of a specific task concluded with a travel agent.²⁶

As can be seen, civil law contracts are used for the organisation of curricular and extra-curricular activities, leisure, tourism and sightseeing. They will be used when schools enter into contracts with third parties. Of course, the practical application of civil law contracts will be of a broader character. It is also possible to enter into contracts of rent, sale, supply, etc.

5. CONCLUSION

Civil law contracts have quite a broad range of application in schools. The legal entity authorised to enter into this type of contracts is the body running the school, but in real life school circumstances, it is the school head that is authorised to enter into such contracts. Civil law contracts will be primarily used when concluding contracts with third parties. Less often, they will be used in employment relations. This comes from the specificity of a teacher's work, which has the character of an employment relationship and hence a civil law contract cannot be concluded. It is possible, however, to enter into civil law contracts with a teacher to perform additional tasks. It seems that due to the more and more common appearance of third parties in the Polish system of education, which is allowed by the new national curriculum,²⁷ such contracts will be more widely used.

²⁶ K. KOŁAKOWSKI, [in:] *Komentarz do kodeksu cywilnego*, p. 170.

²⁷ Directive of Minister of National Education of 23 December 2008 on the Curriculum for Kindergarten and Comprehensive Education in Particular Types of Schools ("Dziennik Ustaw" [Journal of Law] 2009, No. 4, Item 17).

BIBLIOGRAPHY

LEGISLATIVE ACTS

- Act of 7 September 1991 on the System of Education (“Dziennik Ustaw” [Journal of Laws] 2004, No. 256, item 2572 as amended).
- Act of 22 March 1990, on Self-Government Employees (“Dziennik Ustaw” [Journal of Laws] 2001, No. 142, item 1593 as amended).
- Act of 26 January 1982 – Teachers’ Charter (“Dziennik Ustaw” [Journal of Laws] 2006, No. 97, item 674, as amended).
- Act of 26 June 1974 – Labour Code (“Dziennik Ustaw” [Journal of Laws] 1998 , No. 21, item 94 as amended).
- Act of 23 April 1964 – Civil Code (“Dziennik Ustaw” [Journal of Laws] 1964 , No. 16, item 93 as amended).
- Directive of Minister of Education of 28 August 2009, on the Realisation of Safety Activities Education (“Dziennik Ustaw” [Journal of Laws] 2009, No. 136, item 1131).
- Directive of Minister of Education of 19 August 2009 on Acceptable Forms of Realisation of Two Hours of Compulsory Physical Education (“Dziennik Ustaw” [Journal of Laws] 2009, No. 136, item 1116).
- Directive of Minister of Education of 23 December 2008 on the Curriculum for Kindergarten and Comprehensive Education in Particular Types of Schools (“Dziennik Ustaw” [Journal of Laws] 2009, No. 4, item 17).
- Directive of Minister of Education of 8 November 2001 on the Conditions and Means of Organising Sightseeing and Tourism by Kindergartens, Schools and Institutions (“Dziennik Ustaw” [Journal of Laws] 2001, No. 135, item 1516).
- Directive of Minister of Education of 21 January 1997, of the Conditions that Must be Satisfied by Organisers of Leisure for Children and Students as well as Its Organisation and Supervision (“Dziennik Ustaw” [Journal of Laws] 1997 , No. 12, item 67).

LITERATURE

- BARAŃSKI A., SZYMAŃSKA M., ROZWADOWSKA-SKRZECZYŃSKA J.: Ustawa Karta Nauczyciela. Komentarz, Warszawa 2009.
- CZACHÓRSKI W.: Zobowiązania. Zarys wykładu, Warszawa 2002.
- DMOWSKI S., RUDNICKI S.: Komentarz do kodeksu cywilnego. Część ogólna, Warszawa 2007.
- DUBOWIK A.: Wzmoczona trwałość stosunku pracy z mianowania, “Praca i zabezpieczenia społeczne” 2007, No 9, pp. 18-26.
- GAWLIK B.: Umowa know-how. Zagadnienia konstrukcyjne, Warszawa–Kraków 1974.
- Komentarz do kodeksu cywilnego. Księga trzecia. Zobowiązania, ed. G. BIENIEK, vol. I-II, Warszawa 2007.
- KRÓL A., KUZIOR P., ŁYSZCZARZ M.: Komentarz do ustawy o systemie oświaty, Warszawa 2009.
- KURZYNA-CHMIEL D.: Podstawy prawne i organizacyjne oświaty. Prawo oświatowe w zarysie, Warszawa 2009.
- LISZCZ T.: Prawo pracy, Warszawa 2007.

- PILICH M.: Ustawa o systemie oświaty. Komentarz, Warszawa 2008.
RADWAŃSKI Z.: Prawo cywilne – część ogólna, Warszawa 2007.
STELINA I.: Charakter prawny stosunku pracy z mianowania, Gdańsk 2005.

OTHER SOURCES

http://www.men.gov.pl/index.php?option=com_content&view=article&id=865%3Astanowisko-ministerstwa-edukacji-narodowej-na-temat-moliwoci-oraz-zasad-zatrudniania-nauczycieli-szko-do-realizacji-projektow-wspofinansowanych-ze-rodkow-europejskiego-funduszu-spoecznego&catid=87%3Aopinie-i-stanowiska-men&Itemid=106

CIVIL LAW CONTRACTS AT SCHOOL – AN OUTLINE

S u m m a r y

The article concerns various civil law contracts and employment relationships that can be concluded in Polish schools. The author points to the regulations of the Teachers' Charter and other legal acts that refer to this matter. The competences of a school head are also outlined in the article. Subjects authorised to enter into contracts on behalf of schools are mainly school running bodies but in real life school circumstances, it is the school head that is authorised to enter into such contracts.

Key words: civil law; civil code; contracts; nominate contracts; innominate contracts; Teachers' Charter; employment; school.

UMOWY CYWILNO-PRAWNE W SZKOLE – ZARYS

S t r e s z c z e n i e

Artykuł dotyczy różnych umów cywilno-prawnych i stosunków pracy, które można zawierać w polskich szkołach. Autor wskazuje na regulacje Karty Nauczyciela i inne przepisy prawne, które odnoszą się do tego problemu. W artykule są zarysowane także kompetencje dyrektora szkoły. Podmioty uprawnione do zawierania umów w imieniu szkoły to głównie ciała zarządzające daną szkołą, ale w praktyce szkolnej to właśnie dyrektor szkoły jest upoważniony do zawierania takich umów.

Słowa kluczowe: prawo cywilne; kodeks cywilny; umowy; umowy nazwane; umowy nienazwane; Karta Nauczyciela; zatrudnienie; szkoła.

Przetłumaczył Tadeusz Karłowicz