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## STRESZCZENIE

W języku angielskim rozprawy doktorskiej

### **Skuteczność i wykonalność angielskich orzeczeń zabezpieczających w sprawach cywilnych i handlowych.**

The aim of a dissertation is to determine the method of recognition and enforcement of a freezing injunction in Poland.

Before putting freezing injunction under proper scrutiny, it was necessary to place it in the English legal system. English interim measures, including protective measures has been analysed. Freezing injunction is a type of an interim order. English judicature developed general preconditions for granting interim orders. Such preconditions were determined as the criteria characterised by a significant degree of flexibility, thanks to which they could be adapted to new types of interim orders. However, due to the relatively strong interference of the consequences of freezing injunction into the legal and economic sphere of the debtor, it was deemed with respect to this measure that there is a necessity of applying separate, more restrictive requirements determining on the admissibility and legitimacy of their use. Adaptation of the existing prerequisites to the needs of the freezing injunction consisted, on the one hand, in introducing new prerequisites, not applying to other interim measures; on the other hand, in aggravating the existing ones (as it took place with respect to justification of the claim, discussed below). In the dissertation general preconditions for granting interim orders were analysed - a serious issue to be tried, undertaking as to damages, balance of convenience, thanks to which individual character of special preconditions applying to freezing injunction will be exposed. Next, freezing injunction was compared with other interim remedies in England and Wales - detention, custody or preservation of relevant property, interim payment, or arrest of vessel.

Freezing injunction originates from equity law so explanation of the specificity and history of development of equity law an intrinsic element of the studies, enabling the reader to understand the discussed institution. Equity law is based on an assumption that judges should be granted more freedom of adjudicating than in case of common law. The influence of the equity system principles, seen at every stage of adjudication in case of freezing injunction -

assessment of admissibility, scope of application or, finally, discharge or variation, concerns the aspect of granting the judges wide discretion. This feature of the English way of securing claims compels us to thoroughly analyse the English judicature. Another part of the dissertation involves the analysis of the origins of the freezing injunction itself.

The proper study of freezing injunction included a few detailed goals. The first goal was aimed at identifying the sources of law regulating freezing injunction. Secondly, the legal character of the English protective order was defined, with simultaneous determination of the preconditions for its award. Thirdly, the procedure of awarding freezing injunction was discussed. Fourthly, the consequences of applying freezing injunction was described. In CJEU case law the measure of freezing injunction is defined as a court-administered injunction prohibiting the debtor from disposing of assets, which is an instrument of interim legal protection aimed at preventing the situation where the assets owned by the debtor are removed from the debtor's estate - as a result of disposal - against which the creditor could later recover his claims. The freezing injunction order aims at making sure that the future decision will be enforceable. Prerequisites for granting freezing injunction may be divided into those lacking discretionary nature (cause of action and jurisdiction over the defendant) and those which to a significant degree depend on the discretionary power of the judge. Discretionary prerequisites include a good arguable case, existence of assets to be secured and a real risk of dissipation. There are also additional requirements for admitting the application for granting freezing injunction: full and frank disclosure of all material facts, an undertaking to issue a claim form and filing a draft of the order sought with the application notice. Apart from the detailed substantive prerequisites for legitimacy of the application, a supreme prerequisite was created which says that the court may issue a relevant order (injunction) in each case when it deems it just and convenient. Each of the prerequisites, although to a great extent conditioning the decision of the judge, is assessed within the frames of the discretionary power of the judge. Typically of the English legal system, the present form of the prerequisites and requirements for admitting the application results from long-standing court practice. The project will analyse the case law of the English courts and the courts of the Commonwealth countries in order to identify the content of such prerequisites, reasons for their implementation and their meaning in the process of adjudication on freezing injunction.

What clearly differs the English protective measure from its equivalents in the countries of continental Europe is addressing the order against the debtor, and not against the object which is secured. The *in personam* operation of the order is typical of the measures originating from

equity system. The order does not have direct effects in the form of transfer of rights between the parties. The principle „equity acts *in personam*” deeply rooted in the doctrine and judicature leads to the fact that those measures result in the effect concerning the legal situation of the person through imposing on the person a specific obligation, in this case creating the prohibition to dispose all or a part of debtor’s assets.

Freezing injunction creates an obligation of certain conduct which, when breached, leads to contempt of court. A legal transaction breaching the protective order will not lead to invalidation or ineffectiveness of such a legal transaction. Sanctions resulting from contempt of court are of repressive nature. Failure to observe the order may be punished with imprisonment (committal), a fine or sequestration. Both the debtor and a third party may be found guilty of contempt of court. In the English doctrine and judicature contempt of court is classified as misconduct of quasi-criminal nature. It results mainly from the nature of the sanctions which are available in cases concerning contempt of court. Contempt of court was not intended to be a measure to punish the person who breached it. Its primary purpose is to compel the execution of the order and protection of the authority of court and to combat the procedural infringements. However, it is worth mentioning that in some situations a sanction may continue also after the debtor follows the court order, and even in the circumstances where it is known that the administered punishment will not contribute to the execution of the order. There are no doubts that in specific situations the administered sanction is of penalizing nature.

The characteristics of freezing injunction presented in the dissertation leave no doubt that it is a measure unknown to the Polish legal system and for its implementation it is necessary to adapt it in advance to Polish security measures. Three possible directions of adjustment should be considered - through the use of methods of securing monetary claims (Article 747 of the Code of Civil Procedure), establishing a ban on disposal of assets based on the provision of Article 755 of the Code of Civil Procedure regulating the securing of non-monetary claims (other methods of securing claims) or applying a mixed concept combining the methods of securing monetary claims with methods of securing non-monetary claims.

It follows from the considerations made in the dissertation that the implementation of the English freezing injunction in Poland requires an appropriate adjustment by the enforcement authority. In order to ensure the proper effectiveness of the English security measure, a mixed concept should be used, using selected methods of securing monetary claims as well as methods of securing non-monetary claims.