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**The freedom from self-incrimination
in proceedings concerning matters of competition-restricting practices
in the light of standards for the protection of fundamental rights**

(abstract)

The subject of the doctoral thesis is the issue of freedom from self-incrimination in proceedings concerning matters of competition restricting practices, which is one of the current contentious issues of competition law, both under Polish law and in foreign literature regarding other legal systems. The dissertation raises questions concerning the extent to which regulations in the field of competition law and the practice of their application comply with the applicable standards of fundamental rights protection.

In the study, the analysis (in the aspect of freedom from self-incrimination) was subjected to Polish antimonopoly regulations contained in the Act on Competition and Consumer Protection (hereinafter: the UOKiK). On the basis of the UOKiK, the antimonopoly authority (hereinafter: the President of the UOKiK or the authority) has been granted extensive permissions to demand documents and information from the entrepreneur, including through inspections and searches. The entrepreneur's failure to meet the authority's demands may involve the imposition of a severe financial sanction of up to the equivalent of EUR 50,000,000.

The aim of the doctoral thesis is to answer the question whether the abovementioned broad obligation of the entrepreneur to provide information requested by the authority does not lead to an infringement of the rights of defense, part of which is the freedom from self-incrimination and thus violates the principle *nemo se ipsum accusare tenetur*. Therefore, the thesis presents the research on the perception of freedom from self-incrimination in the light of the standards of fundamental rights protection resulting from the ECHR, EU law, Polish Constitution and other national regulations, and then a comparison of these standards. Subsequently, the findings have been made as to whether the Polish antimonopoly authority was bound by particular analyzed standards. The above was intended to determine whether, in view of the broad disclosure obligations imposed on entrepreneurs by the UOKiK regulations, freedom from self-incrimination should be respected in proceedings in the face of the President of the UOKiK, and if so, what sources and standards for the protection of this freedom exist. The last part of the work, presents the research on determining the *model* standard (taking into account the standards mentioned above) of freedom from self-incrimination in proceedings concerning competition-restricting practices and the determination of whether the applicable legal status can be considered as compliant with the model standard.

In view of the above, the aims of the doctoral thesis are:

1. To establish how the standard of protection of freedom from self-incrimination is shaped in the light of the rules according to which the President of the UOKiK conducts proceedings in matters of competition restricting practices set by the national legislator.
2. To establish how freedom from self-incrimination is understood in ECHR case-law and whether the convention standard can fully serve as a reference point in setting the standard of

freedom from self-incrimination in national proceedings concerning competition-restricting practices.

3. To establish whether the freedom from self-incrimination is a procedural guarantee applicable in EU competition law and, if so, what constitutes the basis for its application, how it is understood and whether there are indications for application of such a standard in national proceedings on competition-restricting practices conducted by the President of the UOKiK.

4. To establish how the freedom from self-incrimination is understood in the light of Polish Constitution and the regulations of criminal, civil and administrative procedures and whether there are any indications of application of protection principles of freedom from self-incrimination resulting from Polish Constitution and the regulations of national procedures to national proceedings on competition-restricting practices and, if so, how the standard of protection of freedom from self-incrimination resulting from the Constitution and the indicated procedures affects the interpretation of the regulations of the UOKiK and establishing a model of national standard of freedom from self-incrimination in proceedings concerning competition-restricting practices.

5. To establish the *model* standard (taking into account the above-mentioned convention, EU and national standards) of freedom from self-incrimination in proceedings concerning competition-restricting practices.

6. To establish whether current uokik regulations imposing an obligation to provide the President of the UOKiK with documents and information differ from the existing protection standards of freedom from self-incrimination and, if so, what legislative or factual actions should be taken to ensure that entrepreneurs' rights in proceedings regarding competition-restricting practices are protected in a manner not deviating from the standards.

When writing the thesis, a logical-linguistic research method, a legal-comparative method and a historical method have been used. The study presents the analysis of standards regulating the proceedings in the face of the national and EU competition protection authorities, regarding acquisition of information and documents, standards pertaining to judicial proceedings in connection with appeals against decisions issued by the President of UOKiK, and the analysis of case-law and literature related to the investigated subjects.

The work consists of 8 chapters. Chapter I is dedicated to the presentation of the sources of law which form the basis for constructing the principle of *nemo se ipsum accusare tenetur* in international and Polish law. Chapter II is dedicated to the analysis of legal bases constituting the President of the UOKiK to request documents and information from entrepreneurs. Chapter III contains an analysis of the conventional standard of protection of freedom from self-incrimination and findings regarding possible basis and range of binding the national antimonopoly authority by the convention standard. Chapter IV deals with the analysis of the legal bases underlying the Commission's power to request from enterprises information and documents. Chapter V deals with the standard of protection of freedom from self-incrimination in EU competition proceedings. Chapter VI is dedicated to the standards of protection of freedom from self-incrimination resulting from Polish Constitution and the regulations of the Polish criminal, administrative and civil procedure, the nature of the proceedings in the face of the President of the UOKiK and the principles of judicial verification of decisions issued by the President of the institution. This chapter contains arrangements regarding possible bases and the range of binding national antimonopoly authority by individual national standards and serves to establish, in accordance with national standards, a model of national protection of freedom from self-incrimination in proceedings in the face of the President of the UOKiK.

authority by individual national standards and serves to establish, in accordance with national standards, a model of national protection of freedom from self-incrimination in proceedings in the face of the President of the UOKiK. Chapter VII is dedicated to a comparison of a pattern of the national model for the protection of freedom from self-incrimination in the proceedings in the face of the President of the UOKiK to the conventional and EU standards, establishing the binding of the President of UOKiK by these standards and building a model standard. Chapter VIII is a summary of the findings made in the thesis.

The research carried out in the thesis led to the conclusion that the Polish legislature created a theoretical model of collecting documents and information by the President of the UOKiK, based on the provisions of the Polish civil procedure, which is highly secure in the interests of entrepreneurs against self-incrimination in the course of proceedings restricting competition. This model guarantees a standard of protection of entrepreneurs' rights to the extent comparable to the conventional and EU standards, and in some aspects even exceeds them. However, an important obstacle to the proper functioning of the national standard is the unclear regulation of the rules of conducting evidence proceedings by the President of the UOKiK. This raises a number of practical problems and consequently leads to the omission by the statutory regulation authority, collecting evidence on the basis of the provisions of civil procedure. In such a situation, the standard of protection of freedom from self-accusation in proceedings conducted by the President of UOKiK turns out to be lower than the EU standard due to the lack of clearly defined boundaries of the information obligation and a number of guarantees protecting the freedom of self-incrimination in the EU procedure. Maintaining the standard of protection of freedom from self-incrimination requires statutory changes or at least changes in the practice of the President of the UOKiK on the way in which proceedings are carried out.

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