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# Preclusive Time Limits in the View of Professor Jan Gwiazdomorski: A Historical and Dogmatic Analysis*

## *Terminy zawite w ujęciu Profesora Jana Gwiazdomorskiego. Analiza historyczno-dogmatyczna*

ABSTRACT

This article revisits Professor Jan Gwiazdomorski's reflections on preclusive time limits, formulated many years ago but still of considerable importance for the development of Polish civil law. The Professor's conception not only shaped the contours of the Civil Code but also continues to reverberate in current doctrinal approaches and in the challenges now facing the legislator. The author situates these ideas in their historical setting, underlines the contrasts between limitation of actions and preclusion, and underscores the need for re-codifying the institution. These reflections are placed within the context of contemporary developments in civil law and framed by Professor Gwiazdomorski's intellectual legacy. By combining an assessment of current statutory provisions and doctrinal interpretations with an analysis of historical solutions, the author evaluates the rationality

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and practical utility of existing Civil Code regulations while also identifying a prospective reform orientation. In this historical and dogmatic take on preclusive time limits, Professor Gwiazdomorski's original views, code-related solutions, and proposals to modify them are set against the positions of contemporary scholars. The aim is to provide a broader and more nuanced picture of preclusive time limits and to highlight the institution's role within the practice of civil law in Poland.

**Keywords:** extinctive time limits; preclusion; preclusive time limits; Jan Gwiazdomorski

## INTRODUCTION

Preclusive time limits (Pol. *terminy zawite*) occupy a pivotal place within substantive civil law. From the very outset of work on the Civil Code of 1964,[1] their relationship to limitation of actions has been a matter of controversy, as has the question of their effects and scope. Over the past 60 years, no single coherent theory has emerged that would command broad acceptance in either academic discourse or legislative practice. The intermittent debates on the recodification of civil law in Poland[2] have consistently raised this issue, since – contrary to limitation of actions – the Civil Code, as it is, provides no general regulation governing preclusive time limits. Instead, the existing regulation is fragmentary, usually confined to defining the essentialia of a given preclusive time limit, that is, its duration and the point of commencement.[3]

In Polish legal doctrine, the need to regulate selected issues concerning preclusive time limits within the General Part of the Civil Code has long been advanced. One such initiative found expression in the October 2008 draft of Book One of the Civil Code.[4] The rationale most often cited in favour of such a change lies in the practical difficulties arising from the application of the existing provisions on limits,[5] difficulties that have repeatedly become a source of dispute.[6] Despite their

[1] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2025, item 1071, as amended).

[2] See, e.g., views contained in two monographs edited by P. Stec and M. Załucki: *50 lat kodeksu cywilnego. Perspektywy rekodyfikacji*, Warszawa 2015; *Wokół rekodyfikacji prawa cywilnego. Prace jubileuszowe*, Kraków 2015.

[3] P. Kukuryk, *Terminy zawite w projekcie księgi pierwszej Kodeksu cywilnego*, "Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie" 2017, no. 2, pp. 121–139.

[4] See *Kodeks cywilny. Księga I. Część ogólna. Projekt z objaśnieniami*, https://www.projektkc.uj.edu.pl/dokumenty/Projekt_Komisji_Kodyfikacyjnej_Ksiega_I_z_uzasadnieniem.pdf (access: 26.11.2025).

[5] For example, see S. Wójcik, *O potrzebie i sposobie uregulowania cywilnoprawnych terminów zawitych*, [in:] *Prace cywilistyczne. Księga pamiątkowa dla uczczenia 40-lecia pracy naukowej prof. J. Winiarza*, ed. S. Wójcik, Warszawa 1990, p. 392.

[6] For example, see M. Kłoda, *Zagadnienia międzyczasowe terminów zawitych i terminów trwania stosunku prawnego*, "Monitor Prawniczy" 2019, no. 22, pp. 1219–1225; J. Gołaczyński, *Przedawnienie roszczeń majątkowych i terminy zawite w okresie po ogłoszeniu stanu epidemii związanej z COVID-19*, "Monitor Prawniczy" 2020, no. 8, pp. 397–402.

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varied origins, the proposals put forward reveal a notable point of convergence. They generally recognise that Professor Jan Gwiazdomorski was among the first scholars to undertake a systematic study of preclusive time limits, explicitly pointing to the necessity of regulating them in the General Part of the Civil Code.

Professor Gwiazdomorski was unquestionably concerned with these issues and articulated his position most notably in the article titled *Terminy zawite do dochodzenia roszczeń w kodeksie cywilnym* (*Preclusive Time Limits and the Pursuit of Claims under the Civil Code*).[7] Given that much of his analysis has retained its relevance, it deserves renewed attention, not least in view of the continuing debate on the future of Polish civil law. Accordingly, the purpose of this article is to present Professor Gwiazdomorski's views on preclusive time limits, to analyse their influence on statutory regulations, and to discuss both the current state of scholarship and the challenges facing the present-day legislator.

## PROFESSOR GWIAZDOMORSKI'S VIEWS ON PRECLUSIVE TIME LIMITS

Preclusive time limits, sometimes referred to as preclusive periods or simply as preclusion, are classified among the institutions of extinctive time limits (Pol. *dawność*). Their function is to determine the legal disadvantages resulting from the inaction of a right-holder.[8] They operate whenever legislation establishes a defined period for the performance of a relevant act and attaches negative consequences to a failure to perform within the prescribed time.[9] Within Polish law, preclusive time limits were expressly regulated in the Act of 18 July 1950 – General Provisions of Civil Law.[10] By contrast, the provisions of the Civil Code currently in force (which entered into effect on 1 January 1965) contain no such regulation. Consequently, for six decades the discussion has recurrently arisen – sometimes more, sometimes less intensely – over whether the absence of such provisions constitutes a sound legislative choice. Within this debate, Professor Gwiazdomorski has remained a central figure. He was not merely an active contributor thereto at the time, but his scholarship continues to serve as a frequent point of reference for those reflecting on the issue today.[11]

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[7] J. Gwiazdomorski, *Terminy zawite do dochodzenia roszczeń w kodeksie cywilnym*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1968, no. 3, pp. 87–110.

[8] A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1998, p. 345.

[9] A. Stępień-Sporek, *Terminy zawite – czy potrzebna jest nowa regulacja?*, "Przegląd Sądowy" 2009, no. 1, p. 73.

[10] Journal of Laws 1950, no. 34, item 311.

[11] For example, see P. Kasprzyk, M. Wasiak, *Terminy prekluzyjne na gruncie kodeksu rodzinnego i opiekuńczego*, "Studia z Prawa Wyznaniowego" 2002, vol. 4, p. 195.

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It is beyond question that Professor Gwiazdomorski was deeply engaged with the questions arising in the General Part of the Civil Code, particularly with the institutions of extinctive time limits. In the post-WW2 period, as work on the codification of civil law was underway and following the Civil Code's entry into force, he gave sustained attention to these issues. Above all, he concentrated on the problems associated with limitation of actions and with preclusive time limits. In the former respect, he defended the view that the limitation of property claims should operate only upon the defence raised by the party against whom the time-barred claim is directed, and not *ex officio*. The Civil Code, however, in its initial wording took the contrary position that the expiry of a limitation period is considered *ex officio* (first sentence of Article 117 § 3 of the Civil Code); yet, some years after, on 1 October 1990, the entire Article 117 § 3 was repealed, while sentence on of Article 117 § 2, *in principio*, was reformulated to read: "After a period of limitation has passed, the person against whom a claim is raised may evade the satisfaction of that claim".[12] It is not inconceivable that a similar "victory" may yet await the Professor with respect to his views on preclusive time limits.

In this regard, it must be recalled that Professor Gwiazdomorski maintained that, prior to the entry into force of the 1964 Civil Code, three distinct institutions had existed: limitation of actions, preclusive time limits, and arbitration preclusion.[13] He stressed that the legislator had mistakenly confined the concept of the preclusive time limit to claim enforcement actions, thus neglecting the time limits for the exercise of formative rights and the preservation of existing rights. Referring to the statutory framework applicable prior to 1 January 1965, he observed that when comparing the institution of limitation of actions with that of preclusive time limits for the enforcement of claims and arbitration preclusion, it became apparent that the latter two "operate more strictly than limitation of actions". He advanced two arguments in favour of this thesis. First, in his opinion, the running of such periods was subject to fewer causes of suspension or interruption. His second point concerned the legal consequences of the expiry of these periods. In the case of limitation, the effect for the party against whom the claim had been directed was the possibility of raising the relevant defence; in the case of a preclusive time limit, the civil claim was reduced to a mere natural one; and in the case of arbitration preclusion, the claim was extinguished entirely.[14] These differences – particularly those between limitation of actions and preclusive time limits for the pursuit of claims – led him to conclude that preclusive time limits, rather than limitation, were introduced in situations where a legal relationship needed to be terminated promptly and within

[12] S. Wójcik, *Jan Gwiazdomorski*, [in:] *Złota Księga Wydziału Prawa i Administracji UJ*, ed. J. Stelmach, W. Uruszczak, Kraków 2000, p. 361.

[13] J. Gwiazdomorski, *op. cit.*, p. 88.

[14] *Ibidem*, p. 90.

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a fixed time frame, (i) either to compel the right-holder to pursue the claim in due time, (ii) or to avoid the existence of uncertainty within a given legal relationship for a longer period of time or indefinite time, (iii) or, finally, because the later termination of the legal relationship might encounter considerable practical obstacles (as, e.g., in settlement proceedings).[15] For this reason, he rejected the thesis that preclusive time limits and limitation of actions constituted identical institutions.

In Professor Gwiazdomorski's view, the situation in which preclusive time limits lacked a general, exemplary regulation – such as that provided for limitation – was fundamentally flawed. He argued that preclusive time limits governing the enforcement of claims should be entrenched in the Civil Code as part of its general provisions next to the institution of limitation of actions.[16] He articulated this position on numerous occasions, notably in the course of work on the various drafts of the Civil Code. It was most likely for this reason that, in his co-report on the 1955 draft of the Civil Code, he proposed the insertion of new provisions – Articles $119^1$ and $119^2$ on preclusive time limits.[17] The first of these was intended to provide a concise regulation of preclusive time limits for the pursuit of claims. The other article, for its part, reiterated in respect of preclusive time limits belonging to the second and third groups – namely, those governing the exercise of formative rights (by making an extra-judicial declaration of intent or bringing an action in court to create or alter a legal relationship) and those requiring an extra-judicial act in order to preserve a right – the two principles set out in Article 113 of the draft: that time limits may neither be shortened nor extended by an act in law, and that any waiver of reliance on the effects of their expiry, made before the expiry has occurred, is invalid. During the discussions on the 1955 draft of the Civil Code, and later on the subsequent draft of 1960, this proposal was challenged by other rapporteurs of the draft, including Aleksander Wolter and Jan Wasilkowski. They argued, among other things, that the then prevailing "construct of institutions of extinctive time limits was inconsistent with the requirements of socialist law and was likely to produce undesirable results", and further, that the distinction between a preclusive time limit and preclusion lacked justification.[18] These were the principal reasons why, as the debates continued, the view that no general provisions on preclusive time limits should be introduced gained the upper hand and – despite Professor Gwiazdomorski's opposition – formed the basis of the first Polish Civil

[15] *Ibidem*.

[16] See also S. Szer, *Z problematyki przedawnienia*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1968, no. 3, pp. 212–221.

[17] See J. Gwiazdomorski, *op. cit.*, p. 88 ff.

[18] Professor Gwiazdomorski (*ibidem*, p. 91) points, among other things, to the remarks voiced during the meetings of the Substantive Civil Law Team of the Codification Commission concerning the draft Civil Code.

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Code enacted in 1964 (Articles 117–125), as well as, it may be surmised, fuelling many controversies persisting to this day.

Professor Gwiazdomorski – most likely anticipating the potential consequences of this omission – did not accept the concept embodied in the Civil Code. He cast doubt on the claims and assumptions articulated, for instance, in the justification to the draft, arguing that multiple distinct institutions regulated the time limits for pursuing claims, which made it untenable to sustain the assertions that: (1) the draft Civil Code significantly simplified the provisions on time limits for pursuing claims; (2) it fused the previously distinct institutions of limitation of actions and preclusion into a single institution of limitation; (3) it shaped limitation as a uniform construct; and (4) it narrowed the existing differences between legal relationships falling under the jurisdiction of the State Economic Arbitration and those subject to the jurisdiction of the courts.[19] According to Professor Gwiazdomorski, the situation was in fact precisely the reverse.

Consequently, Professor Gwiazdomorski criticised the concept of unifying preclusive time limits with limitation of actions, as adopted first in the draft Civil Code and later in the Code itself. He argued that numerous specific provisions (such as those on warranty for defects or possessory claims) continued to exhibit the character of preclusive time limits. From the standpoint of certainty of legal transactions and debtor protection, he maintained that it was essential to preserve stricter time limits in situations where a prolonged state of uncertainty would be socially harmful (e.g., in neighbour relations, possession, or defects in sold items). In his view, limitation and preclusive time limits ought to be regulated separately.

Although Professor Gwiazdomorski consistently and openly opposed the draft and, later, the Civil Code, his arguments were ultimately disregarded. The 1964 Civil Code, despite the many critical voices expressed over subsequent decades, still contains no general regulation of preclusive time limits. Professor Gwiazdomorski considered this omission a serious flaw, and it is highly probable that he would reaffirm that judgment under present conditions. In the course of time, his stance has also attracted a considerable following. As another eminent civil law scholar, Professor Sylwester Wójcik, observed, Gwiazdomorski was correct in arguing that it was untrue to claim that the Civil Code abolished preclusive time limits and created a uniform institution of limitation of (property) claims. Wójcik recalled that Gwiazdomorski had always maintained that preclusive time limits continued to exist both in the Civil Code and in code-external statutes, that such limits were numerous, and that even proprietary claims could fall within their scope. It was, therefore, unfortunate that the Civil Code did not include any general provisions on preclusive time limits, and the criticism of this body of law voiced many years ago remains fully relevant today.[20]

[19] *Ibidem*, p. 101.

[20] S. Wójcik, *Jan Gwiazdomorski…*, p. 361.

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## THE INFLUENCE OF PROFESSOR GWIAZDOMORSKI'S VIEWS ON LEGAL SCHOLARSHIP AND LEGISLATION

The historical contribution of Professor Gwiazdomorski to legislative work was, as is well known, considerable. As a member of the Codification Commission and as rapporteur and co-rapporteur for numerous drafts, he advanced many noteworthy proposals. His views also exerted an influence on both case law and legal doctrine, as can be seen, among other things, in relation to the topic under discussion here. From the very outset of the 1964 Civil Code, a number of scholars – among them Seweryn Szer and Aleksander Wolter – pointed in later years to the need to differentiate preclusive time limits from limitation of actions. The same line of reasoning was eventually endorsed by the case law of the Supreme Court. At first, however, the Court adhered to a contrary stance. A case in point is the resolution of 7 January 1965 (III PO 39/64), in which the Supreme Court said that "the Civil Code, in Articles 117–125, has regulated the institution of limitation of property claims binding in civil-law relations. This new regulation removes the division between limitation of actions and preclusion that had existed up to the entry into force of the Civil Code. As a result, within the domain of civil-law relations, the question of differences between preclusion and limitation no longer arises". Over time, however, the Court altered its position, recognising the existence of preclusive time limits and frequently debating the applicability of the provisions on limitation thereto. In this respect, it adopted radically divergent positions: ranging from the outright exclusion of the application of limitation rules to the running of preclusive time limits (as in the resolution of 9 February 2017, III CZP 98/16) to the acceptance of such application by way of analogy (as in the resolution of 20 May 1978, III CZP 39/77).

In that resolution, the Supreme Court stressed that, given the absence of specific statutory regulation of preclusive time limits in civil law, the Polish legislator envisaged that many of the interpretive doubts arising in their application would inevitably be addressed by the case law, employing established interpretive methods. One such method was the analogous application to preclusion of certain rules governing limitation of actions, since the total lack of provisions on the former created a material gap, and the institution of preclusion, while not identical, was in many respects akin to limitation. Both serve a comparable function as time-related constraints, with the decisive distinction lying in the greater rigour of preclusive time limits. The Court therefore concluded that the application by analogy of limitation provisions to preclusive time limits was not ruled out in principle, though such recourse had to be undertaken with caution, warranted by the rigorous nature of preclusive periods. Every preclusive period, the Court emphasised, required careful consideration of the reasons that support its rigorous enforcement and those that argue for the mitigation of its severity through analogy. The assessment

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must always determine which of the two options better serves social and economic interests and the principles of social coexistence.[21]

Thus, it can be inferred that the status of preclusive time limits in the present-day Polish legal system is the subject of considerable controversy. What the law drafters envisioned as a measure to streamline practice has, in reality, generated greater uncertainty. This situation has often been assessed as a regression when set against the framework established in the 1950 General Provisions of Civil Law.[22]

The foregoing considerations make it evident that Professor Gwiazdomorski perceived preclusive time limits as instruments primarily designed to safeguard the public interest, including fundamental values such as legal order, the proper functioning of the economy, and family stability. Accordingly, preclusion, in contrast to limitation of actions, is marked by a heightened rigour, since it curtails far more strictly the time limits available for the enforcement of claims. It is therefore unsurprising that contemporary doctrine – building on Gwiazdomorski's findings – continues to distinguish preclusive time limits from limitation of actions, relying on the criterion of the legal effect produced by the expiry of the time limit. While preclusive time limits extinguish the right itself, limitation merely leads to the emergence of a procedural defence. This distinction proves crucial, e.g., in evaluating the admissibility of renouncing the defence, the running of the period under conditions of force majeure, or the effects of acknowledging a claim.

Legal scholarship has, in many instances, also adopted the view that the absence of general provisions concerning preclusive time limits in the Civil Code adds to the fragmented regulatory framework and interpretative difficulties, particularly in the application of general clauses or analogical cases. Contemporary commentators advocate, among other solutions, a return to the concept of general provisions on preclusive time limits. This idea surfaced in Poland in 2008 with the presentation of the assumptions for Book One of the prospective, optimal Civil Code of the Republic of Poland. The drafted Articles 192–195 directly addressed the long-voiced doctrinal demand to regulate once again certain general aspects of preclusive time limits, and the omission of this matter in the Civil Code currently in force was even described as a classic example of a structural gap.[23]

It would seem that the regulation of preclusive time limits now stands among the foremost legislative challenges confronting the Civil Law Codification Commission, established in 2024 under the auspices of the Minister of Justice. The gravest

[21] See G. Wolak, *Glosa do postanowienia Sądu Najwyższego z dnia 28 maja 2015 r., III CSK 352/14, OSNC 2016, nr 5, poz. 63*, "Przegląd Prawno-Ekonomiczny" 2016, vol. 35(2), p. 197.

[22] See S. Grzybowski, [in:] *System Prawa Cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Wrocław 1974, p. 635.

[23] Z. Radwański, M. Zieliński, *Stosowanie i wykładnia prawa cywilnego*, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Warszawa 2012, p. 495.

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difficulty lies in the absence of a coherent framework: preclusive time limits are dispersed across a multitude of statutes and prescriptive acts, including the Civil Code, the Family and Guardianship Code, and the Civil Procedure Code, thereby rendering their uniform application exceedingly problematic. An additional source of concern is the protection of the weaker party to the legal relationship (employee or consumer), who remains vulnerable to the severe effects of preclusion – a matter that occasionally raises doubts of both constitutional and European legal significance. The absolute nature of these time limits and the attendant consequence of the extinction of the substantive right upon their expiry, their excessive rigidity when measured against the principle of proportionality, the disparate treatment of persons in comparable circumstances, the absence of any mitigating mechanism, and the indeterminacy of the law itself – these are just some of the objections raised in scholarly discourse against the current legal regime and its failure to provide a general regulation of preclusive time limits.

Viewed in this light, it is hardly surprising that the reforms now envisaged include, i.a, (i) a definition of the preclusive time limit within the General Part of the Civil Code; (ii) the unification of the rules governing the running, suspension, and interruption of such limits; and (iii) the possibility of restoring a time limit in exceptional circumstances. These proposals suggest that a return to the broad concept articulated by Professor Gwiazdomorski several decades ago might add greater coherence and predictability to Polish civil law.

## CONCLUSIONS

The analysis of Jan Gwiazdomorski's concept reveals that, notwithstanding the formal absence of general provisions on preclusive time limits in the Civil Code, the institution has retained its central significance in the structure of civil law. Its strict consequence – the extinction of a right – and its wide-ranging application in specific statutory provisions have led many to believe that a renewed codification is both necessary and desirable. Contemporary challenges – such as the protection of the weaker party to a legal relationship, the safeguarding of constitutional values, and the conviction that the defining features of preclusion should not rest solely upon generally acknowledged but unwritten conventions – appear to argue in favour of the future enactment by the legislator of a regulation devoted specifically to preclusive time limits. Apparently, these relatively new circumstances – many of which were neither known nor confirmed in practice at the time when Professor Gwiazdomorski advanced his position – serve to confirm the continuing relevance of his proposals also in the present legal reality.

Recalling the work of Professor Gwiazdomorski in this context is of undeniable importance. The debate on the future of Polish civil law, including the role to be

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accorded to preclusive time limits within its optimal codification, must inevitably engage with the concept which he expounded in his paper, *Terminy zawite do dochodzenia roszczeń w kodeksie cywilnym*, despite the fact that it was penned many decades ago. In this way, the intellectual legacy of Professor Gwiazdomorski will continue to resonate in the years ahead.

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Resolution of the Supreme Court of 9 February 2017, III CZP 98/16.

ABSTRAKT

W artykule powrócono do refleksji Profesora Jana Gwiazdomorskiego na temat terminów zawitych, sformułowanych wiele lat temu, ale wciąż mających istotne znaczenie dla rozwoju polskiego prawa cywilnego. Koncepcja Profesora nie tylko ukształtowała zarys Kodeksu cywilnego, ale również nadal znajduje odzwierciedlenie we współczesnych ujęciach doktrynalnych i wyzwaniach stojących przed ustawodawcą. Autor omawia tło historyczne, niektóre różnice między przedawnieniem i prekluzją, a także potrzebę ponownej kodyfikacji tej instytucji. Refleksje te osadzone są w kontekście współczesnych przemian prawa cywilnego na kanwie rozważań Profesora Gwiazdomorskiego. Łącząc ocenę aktualnych przepisów prawa i poglądy doktryny z analizą rozwiązań historycznych, autor ocenia racjonalność i celowość obecnych przepisów Kodeksu cywilnego, a także wskazuje na kierunek ewentualnych reform. W dokonanej analizie historyczno-dogmatycznej terminów zawitych autor bada poglądy Profesora Gwiazdomorskiego, rozwiązania kodeksowe oraz pomysły na ich modyfikację, zestawiając je ze stanowiskiem współczesnej doktryny. Celem jest przedstawienie szerszego i bardziej szczegółowego obrazu terminów zawitych oraz podkreślenie roli tej instytucji dla praktyki stosowania prawa cywilnego w Polsce.

**Słowa kluczowe:** dawność; prekluzja; terminy zawite; Jan Gwiazdomorski