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Some Remarks on Consumer-Requested Invalidity*

O tak zwanej nieważności na żądanie konsumenta

ABSTRACT

The article, conceived as a research study, explores the entitlement, developed in case law on consumer protection, that makes the invalidity of a contract contingent on the consumer's will, and the way it reshapes the very notion of invalidity as a legal sanction. The research problem addresses the evolution of traditional civil law institutions, in particular the sanction of invalidity of a legal act and the interpretation of a declaration of intent. The article seeks to determine whether this entitlement calls for a subjective interpretation of the consumer's declaration of intent in consumer contracts, and whether it compels a rethinking of the concept of the legal act itself. The inquiry is made within both the national and the European Union contexts, since it covers issues grounded in EU law. The article aspires to enrich scholarship by engaging with a topical theoretical question and to inform practice in light of the rich body of case law on consumer matters.

Keywords: consumer; unfair contract terms; ineffectiveness; invalidity; subjective interpretation of intent

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INTRODUCTION

Professor Jan Gwiazdomorski made a substantial contribution to the development of the general part of civil law by advancing the concept of the legal act, analysing its constituent elements, advocating the objectivisation of the declarations of intent of parties to a legal act,[1] and systematising the doctrine of the general part of civil law.[2] With reference to his works, the article examines the impact of judicial case law concerning the invalidity of consumer contracts, most notably foreign-currency-indexed contracts, such as those denominated in the Swiss franc, on the doctrinal understanding of the legal act. This body of case law remains under the influence of the rulings of the Court of Justice of the European Union (CJEU), which clarify how consumer protection is to be shaped under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.[3] Consequently, Directive 93/13 influences the application of civil law, extending also to principles that are only indirectly connected with the protection of consumers, as they are not expressly governed by the legal provisions of this EU act. This results in the harmonisation of the laws of the EU member states in those areas where Directive 93/13 operates only indirectly. One such principle is the court's duty to take account *ex officio* of the (absolute) invalidity of a legal act.[4] The protection of consumers envisaged in Directive 93/13 requires that, when declaring a contract invalid, the court should consider both the legal consequences for the consumer and the consumer's intent as to whether the contract is to be upheld or set aside.

This article aims to establish whether conditioning the judicial declaration of invalidity of a contract concluded with a consumer upon the will of the consumer entails the requirement of a subjective interpretation of the consumer's declaration of intent. It further seeks to determine whether, for that reason, an adjustment of the concept of legal act is required where it takes the form of a consumer contract. The research thesis of this article posits that the consideration of the consumer's will in maintaining or declaring the invalidity of a contract constitutes an instance of the subjectivisation of the declaration of intent. In light of the theory of combined declarations of intent adopted in Polish law (Article 65 of the Civil Code[5]),

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[1] J. Gwiazdomorski, *Próba korektury pojęcia czynności prawnej*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Wynalazczości i Ochrony Własności Intelektualnej" 1973, no. 1, pp. 57–70.

[2] F. Zoll, *Prawo cywilne opracowane głównie na podstawie przepisów obowiązujących w Małopolsce*, vol. 1: *Część ogólna*, in cooperation with J. Gwiazdomorski, L. Oberlender, T. Sołtysik, Poznań 1931.

[3] OJ L 95/29, 21.4.1993.

[4] A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2001, pp. 328–329.

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

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making the validity of a contract contingent upon the consumer's will should be understood as a condition of the very existence of the relevant legal act. Absent such will on the part of the consumer, the legal act (contract) should be regarded as non-existent. Accordingly, the research thesis of the article also holds that the condition of the consumer's will does not alter the concept of the legal act and that no adjustment thereof is required. The article employs the dogmatic-legal method in conjunction with the theoretical method.

THE CONDITION OF THE CONSUMER'S CONSENT IN CASE LAW AND SCHOLARLY OPINION

For the purposes of this article, attention will be directed to the case law of the CJEU concerning the ineffectiveness of unfair contractual terms and the condition of the consumer's consent to their application. At the outset, it must be emphasised that the said case law imposes upon the court the obligation to examine *ex officio* whether the provisions of a consumer contract are unfair. This entails that the court is obliged *ex officio* to ascertain the occurrence, by operation of law, of the sanction of ineffectiveness of a contractual term which has not been individually negotiated with the consumer, which regulates the consumer's rights and obligations in a manner contrary to good practice, and which grossly violates the consumer's interests – Article 385[1] § 1 first sentence CC (unfair contract terms).

Such a stance was articulated by the CJEU in its judgment of 4 June 2009 in Case C-243/08[6], and subsequently in its judgment of 21 December 2016 in Joined Cases C-154/15, C-307/15 and C-308/15,[7] in which the Court held that a national court is under a duty *ex officio* to assess the unfair character of a specific contract term, provided that it is cognisant of the legal and factual circumstances necessary for that assessment (para. 58). The CJEU reiterated this position in its judgment of 22 September 2022 in Case C-355/21,[8] emphasising that the inequality between the consumer and the trader may be counterbalanced solely by the active intervention of an entity other than either party to the contract. Accordingly, the court is obliged, on its own motion, to assess the potentially unfair character of a contract term covered by Directive 93/13, insofar as it possesses the requisite knowledge of the relevant legal and factual elements (para. 52).

In a similar vein, in its decision of 28 November 2018 in Case C-632/17,[9] the CJEU emphasised that a court is obliged, on its own motion, to examine whether

[6] Legalis no. 139353, paras 23–24, 31–32, 35.
[7] Legalis no. 2255309.
[8] Legalis no. 2791077.
[9] Legalis no. 1856125.

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the contract terms covered by Directive 93/13 are unfair (para. 36). This holding applies equally to order-for-payment proceedings, for if the adjudicating court were not vested with the competence to examine the potentially unfair character of a specific term of a consumer contract, the mere possibility of lodging objections against the payment order would not suffice to secure compliance with the consumer's rights under Directive 93/13. Under the current legal framework, the safeguards for consumer rights in order-for-payment proceedings is provided by Article 485 § 2 second sentence of the Civil Procedure Code.[10] This provision stipulates that where the defendant in such proceedings is a consumer, the claimant must attach to the statement of claim the contract from which the claim secured by the promissory note arises, together with the promissory note agreement and relevant annexes. In a statement of claim brought against a natural person, a declaration must be included as to whether the asserted claim arises from a contract concluded with the consumer. According to the CJEU, ensuring compliance with consumer rights also requires that the court supervising enforcement proceedings have the power to examine *ex officio* the potentially unfair nature of the terms of a consumer contract.[11]

Attention should next be given to the CJEU rulings, which hold that contract terms found to be unfair may be replaced by the court with default provisions of a supplementary nature. This possibility is confined to circumstances in which the removal of an unfair term would oblige the court to declare the entire contract invalid, thereby producing detrimental consequences for the consumer. Such consequences consist in the obligation to return undue performance (loan) and the immediate enforceability of the trader's (the bank's) claim. This result is less advantageous to the consumer than to the trader and divests the sanction of ineffectiveness of its deterrent function *vis-à-vis* the trader. Moreover, the replacement of unfair contract terms by default provisions necessitates the consent of the contracting parties, which follows from the relatively binding character of such legal norms. Concurrently, the CJEU holds the position that unfair contract terms cannot be supplanted by the general provisions of civil law which, as regards the effects produced by a legal act, refer to the principles of social coexistence or to customary practices, i.e. outside the legal system.[12]

Ultimately, for the attainment of the aim set forth in this article, it is necessary to consider the case law of the CJEU, in which it expressly held that the consumer

[10] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2024, item 1568, as amended).

[11] See CJEU judgments: of 17 May 2022 in Case C-725/19, Legalis no. 2692965; of 18 January 2024 in Case C-531/22, Legalis no. 3039026.

[12] See CJEU judgments: of 30 April 2014 in Case C-26/13, Legalis no. 966197, paras 80–85; of 3 October 2019 in Case C-260/18, Legalis no. 3039026, para. 48, Legalis no. 2230278; of 26 March 2019 in Joined Cases C-70/17 and C-179/17, Legalis no. 1889881, para. 56.

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should be apprised by the court of the consequences of the contract's invalidity, and that the former should consent to the declaration of invalidity. This position was advanced in the judgment of 3 October 2019 in Case C-260/18 (para. 68), which reads: "Article 6 (1) of Directive 93/13 must be interpreted as precluding unfair terms contained in a contract from being upheld where their removal would entail that contract being annulled and the court takes the view that that annulment would give rise to unfavourable effects for the consumer, if the latter has not consented to them being upheld". This proposition is to be construed as signifying that, even if the elimination of unfair terms were to result in the invalidity of the contract and adverse consequences for the consumer, Article 6 (1) of Directive 93/13 does not exclude the consumer's right to demand a declaration of invalidity of the contract, which at the same time amounts to a refusal to consent to the continued application of the unfair term. The context of invalidity emerges in situations where, absent the unfair term to which the consumer withholds consent, the contract is incapable of performance, as its content does not permit the reconstruction of the parties' rights and obligations.[13] In its judgment of 29 April 2021 in Case C-19/20,[14] the CJEU explained that a court determining the unfair character of a contract term is obliged to apprise the consumer of the legal consequences ensuing from the declaration of invalidity of the contract, even where the consumer is represented by a professional counsel.

The Polish Supreme Court addressed the issue of the consumer's consent to the declaration of invalidity of a contract in its judgment of 25 July 2023.[15] In that ruling, it explained that the court should take measures aimed at protecting the consumer from the severely adverse consequences of invalidity, which arise where, without the unfair terms, the contract cannot remain in force. The court is required to undertake such measures in view of the circumstances existing or reasonably foreseeable at the time of the dispute, taking into account the consumer's genuine and present interests, with the reservation that, for the purposes of assessment of the consequences of invalidity, determinative significance attaches to the will expressed by the consumer in this regard.

The literature on the sanction of ineffectiveness of unfair contract terms is extensive. The character of the sanction provided for in Article 385^1 § 1 CC, however, is not uniformly construed in the doctrine. It is generally recognised that it constitutes a form of ineffectiveness arising by operation of law. Some authors distinguish this ineffectiveness from the sanction of suspended ineffectiveness

[13] Resolution of the full Civil Chamber of the Supreme Court of 25 April 2024, III CZP 25/22, OSNC 2024, no. 12, item 118; judgment of the Supreme Court of 5 April 2023, II NSCc 89/23, Legalis no. 2910259.

[14] Legalis no. 2562735.

[15] II CSKP 1487/22, Legalis no. 2969320.

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and from that of relative ineffectiveness.[16] Other commentators take the view that Article 385[1] § 1 CC expresses the sanction of suspended ineffectiveness.[17] It has also been argued that the said sanction amounts to invalidity.[18] There is likewise scholarship that examines the sanction of ineffectiveness in the context of defects in Swiss franc-denominated credit agreements.[19] The issue of refraining from invoking the invalidity of a contract and the court's decision not to declare the sanction of invalidity has been addressed by Fryderyk Zoll and Wojciech Bańczyk. They argue that the court should determine whether, without the ineffective (unfair) term, the contract can still remain in force. Should this not be the case, the sanction of absolute invalidity must be imposed, even if another outcome would be more advantageous to the consumer. Nonetheless, the consumer may waive the sanction of invalidity by means of a procedural act carrying substantive legal effects, in which case the contract will continue in force in its original form.[20] Conversely, Grzegorz Sikorski has taken a critical stance on the consumer's right to refrain from invoking the invalidity of a contract, noting that the requirement of a declaration by the consumer lacks any foundation in Directive 93/13.[21] It must further be observed that the so-called Academic Draft of the Civil Code of 2015 envisaged Article 77, under which the provisions on the invalidity of a legal act were not to apply to its terms inconsistent with peremptory provisions intended to safeguard the interests of the consumer. Such terms would instead be subject to the sanction of ineffectiveness. The purpose of Article 77 was to vest in the consumer the decision as to whether to derive legal consequences from a term that contravened the law.[22]

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[16] See M. Bednarek, P. Mikłaszewicz, [in:] *System Prawa Prywatnego*, vol. 5: *Prawo zobowiązań – część ogólna*, ed. K. Osajda, Warszawa 2020, pp. 820–822; M. Gutowski, *Bezskuteczność czynności prawnej*, Warszawa 2013, pp. 305–307.

[17] For example, see R. Trzaskowski, *Skutki sprzeczności umów obligacyjnych z prawem*, Warszawa 2013, pp. 576–639; M. Krajewski, *Nowe spojrzenie na niektóre sankcje w prawie umów konsumenckich*, [in:] *Ochrona słabszej strony stosunku prawnego. Księga jubileuszowa ofiarowana Profesorowi Adamowi Zielińskiemu*, ed. M. Boratyńska, Warszawa 2016, pp. 591–603. Similarly the Supreme Court in its resolution of 7 May 2021, III CZP 6/21, OSNC 2021, no. 9, item 56.

[18] M. Skory, *Klauzule abuzywne w polskim prawie ochrony konsumenta*, Kraków 2005, p. 193 ff.

[19] See M. Gutowski, *Wadliwość umów kredytów frankowych*, Warszawa 2022; Ł. Węgrzynowski, *Prawo zatrzymania w sporze frankowym*, "Prawo i Więź" 2024, no. 5, pp. 475–495; J. Studzińska, *Podstawy wyłączenia sędziego posiadającego kredyt frankowy*, "Prawo i Więź" 2024, no. 4, pp. 467–490.

[20] F. Zoll, W. Bańczyk, *Komentarz do art. 385[1]*, [in:] *Zobowiązania. Część ogólna*, vol. 2: *Komentarz*, ed. P. Machnikowski, Warszawa 2024, margin no. 75.

[21] G. Sikorski, *Nieważność czy bezskuteczność zawieszona umowy zawierającej klauzule abuzywne*, "Gdańskie Studia Prawnicze" 2023, no. 1, pp. 237–247.

[22] R. Trzaskowski, [in:] *Kodeks cywilny, Księga pierwsza. Część ogólna. Projekt Komisji Kodyfikacyjnej Prawa Cywilnego przyjęty w 2015 r. z komentarzem członków zespołu problemowego KKPC*, ed. P. Machnikowski, Warszawa 2017, pp. 119–120.

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THE CONSEQUENCES OF THE CONSUMER'S RIGHT NOT TO INVOKE INVALIDITY AND THE CONCEPT OF LEGAL ACT (A DISCUSSION)

Based on the position of the CJEU and the doctrine, the following conclusions may be drawn. The aim of Directive 93/13, namely the protection of the consumer's interests, justifies the court's departure from applying *ex officio* the sanction of invalidity of a legal act. This is contingent upon the consumer's decision to consent to being bound by unfair (unlawful) contract terms. Once such consent has been given, those terms cease to be subject to the sanction of ineffectiveness, which otherwise operates *ipso iure*. If, therefore, the consumer affirms the unfair terms, and these constitute essential elements of the legal act for its performance or for recognising that the existing legal relationship reflects the will of the contracting parties, the sanction of invalidity of the legal act will not apply. For there will be no alteration of the contract so profound as to consider it a contract of a nature and character distinct from that originally intended by the parties.[23] Neither will there occur a situation in which the surviving provisions of the contract are inconsistent with the nature of the legal relationship on the ground that they do not comprehensively determine the rights and obligations of the parties, thereby rendering performance under the contract impossible.[24]

Where the consumer agrees to the unfair contract terms, thereby waiving their ineffectiveness, the issue of the contract's invalidity does not arise, whether on account of the impossibility of its performance or because the existing legal relationship fails to reflect the content intended by the contracting parties. Recourse to the sanction of invalidity is contingent upon the ineffectiveness of those terms of the contract that are necessary for the constitution of a legal relationship of a nature and character consistent with the parties' intent.[25] This does not, however, imply that a procedural claim seeking a declaration of ineffectiveness of a specific contract term is equivalent to, or embedded in, a claim for a declaration of the contract's invalidity.[26]

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[23] See decision of the Supreme Court of 15 February 2024, I CSK 409/23, Legalis no. 3050343.

[24] See judgment of the Supreme Court of 10 May 2022, II CSKP 382/22, Legalis no. 2700397; judgment of the Supreme Court of 20 May 2022, II CSKP 796/22, Legalis no. 2700371.

[25] Cf. decision of the Supreme Court of 15 February 2024, I CSK 409/23, Legalis no. 3050343.

[26] See resolution of the Supreme Court of 15 September 2020, III CZP 87/19, OSNC 2021, no. 2, item 11, p. 45, wherein the Court clarified that a procedural claim for a declaration that a term within a standard contract is not binding upon the consumer (Article 385^1 CC) is neither tantamount to nor subsumed within a claim for a declaration of the invalidity of the contract (Article 58 CC). See also T. Nowakowski, *Niedozwolone postanowienia umowne a nieważność umowy – glosa do uchwały Sądu Najwyższego z 15.09.2020 r., III CZP 87/19*, "Glosa. Prawo Gospodarcze w Orzeczeniach i Komentarzach" 2021, no. 1, pp. 79–85; M. Szymański, *Zakres żądania uznania postanowienia wzorca umowy za niewiążące konsumenta*, "Monitor Prawniczy" 2021, no. 5, pp. 271–272.

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In light of the aim of the article, it is necessary to examine the relationship between the consumer's right not to invoke invalidity and the concept of legal act. In my view, this is appropriate, since only a legal act of a particular type – a contract, specifically a consumer contract – produces the effect of the right not to invoke the sanction of invalidity (designed as the party's consent to be bound by the ineffective terms of a contract that, however, are essential to the nature of the legal relationship). This right arises, under Article 56 CC, upon the conclusion of a consumer contract. It would appear that this entitlement takes the normative form of defence under substantive law. Its source is to be found in the provisions of substantive law (Article 6 of Directive 93/13 and Article 385^1 CC). It seems to stem from the sanction of ineffectiveness and the corresponding consumer's entitlement to consent to an unfair contract term.

As the consumer is not bound by unfair contract terms, and in their absence the contract cannot subsist due to the omission of clauses indispensable to its type, it may be argued that this situation should be regarded as the actual failure of a legal act to occur (*negotium non existens*). Such a construction would appear to resolve the uncertainties surrounding the very possibility of the so-called consumer's consent to the invalidity of the contract. In the traditional view, the sanction of invalidity arises by operation of law, and a legal act thereby affected is not susceptible of validation.[27] The consumer's consent could be regarded as a declaration of intent encompassing contract terms rendered ineffective *ipso iure*.[28] Unlike in the context of Article 58 § 3 CC, this would not entail an inquiry into the will of the parties at the time of entering into the contract.[29] The consumer's prior conduct could not be regarded as a declaration of intent, since, owing to the ineffectiveness of the elements (terms) constitutive of the existence of a legal act, the act itself was never completed.[30] This assumption corresponds to the legal standard enshrined in § 141

[27] A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, pp. 328–329.

[28] Marcin Krajewski (*op. cit.*, p. 602) argues that such a solution would be precluded by the situation in which the trader remains bound by an ineffective contract term. Maciej Gutowski (*Wadliwość…*, pp. 287–288) maintains that the consumer's declaration is of a constitutive character and pertains to a legal relationship that is either devoid of binding force or conditionally binding.

[29] See R. Trzaskowski, *Skutki…*, pp. 319–330.

[30] This is how the absence of a legal act was explained by Biruta Lewaszkiewicz-Petrykowska ([in:] *System Prawa Cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Wrocław 1985, p. 705). See also K. Pietrzykowski, *Bezwzględnie nieważne uchwały walnego zgromadzenia spółdzielni (de lege lata i de lege ferenda)*, [in:] *Prace z prawa prywatnego. Księga pamiątkowa ku czci sędziego Janusza Pietrzykowskiego*, ed. Z. Banaszczyk, Warszawa 2000, p. 206; idem, *Negotium non existens*, "Rejent" 2008, no. 12, p. 109 ff.; S. Sołtysiński, *Rozważania o nieważnych i „nieistniejących" czynnościach prawnych ze szczególnym uwzględnieniem uchwał zgromadzeń spółek kapitałowych i spółdzielni*, [in:] *W kierunku europeizacji prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Jerzemu Rajskiemu*, eds. A. Brzozowski, W. Kocot, K. Michałowska, Warszawa 2007, pp. 305–326. In the so-called Academic Draft of the new Civil Code, proposed by the Civil Law Codification Commission in 2009 (see Komisja

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of the German Civil Code,[31] under which the parties to an invalid legal act may subsequently confirm it. Such confirmation is regarded as a new contract; however, it does not necessitate the re-submission of declarations of intent of in full as those comprising the void legal act.[32]

In the course of judicial proceedings concerning the ineffectiveness of unfair contract terms, and consequently the invalidity of the entire contract, the court determines whether the consumer was afforded the opportunity to negotiate those terms, thereby verifying whether they correspond to the consumer's intent (Article 385^1 § 3 CC). Where a contract term is not open to negotiation, the consumer's intent finds no expression in the contract. If a term not individually agreed proved to be unfair (unlawful), it cannot be binding, and without it the legal relationship may fail to reflect the consumer's intent. As Jan Gwiazdomorski elucidated, in doctrinal conceptions which regard the intent of a party to a legal act as the cause of legal effects, the lack of an intent to produce a specific effect on the part of the declarant results in the non-existence of the legal act.[33]

CONCLUSIONS

The consumer's right to consent to being bound by ineffective contract terms renders the operation of the sanction of invalidity of the legal act contingent upon the consumer's intent. This happens where the consumer refuses to consent to ineffective contract terms and, in their absence, the relevant consumer contract either forfeits the essence and character envisaged by the parties or cannot be performed due to the absence of those (ineffective) terms which set out the rights and obligations of the parties comprehensively. In such circumstances, the court declares the contract invalid. Still, even then, the court takes account of the consumer's interest and intent. Consequently, in my opinion, the court should undertake a subjective interpretation of the consumer's declaration of intent, as it is incumbent upon the

Kodyfikacyjna Prawa Cywilnego działająca przy Ministrze Sprawiedliwości, *Księga pierwsza Kodeksu cywilnego. Projekt z uzasadnieniem*, Warszawa 2009, https://www.gov.pl/attachment/913828a1-9cd5-4801-822b-2bb9d99e5960, access: 3.8.2025), the situation presently governed by Article 83 CC was recognised as *negotium non existens*. The legal norm derived from that provision attaches the sanction of absolute invalidity to a legal act performed for the sake of appearance (sham legal act). For more on this subject, see D. Bierecki, *Konsekwencje prawne zniesienia pozorności jako wady oświadczenia woli w projekcie nowego Kodeksu cywilnego*, "Prawo i Więź" 2014, no. 2, pp. 65–80.

[31] Bürgerliches Gesetzbuch of 18 April 1896, BGBl I, p. 42, as amended.

[32] H. Wais, [in:] *German Civil Code – Bürgerliches Gesetzbuch (BGB*), vol. 1: *Books 1–3. Article-by-Article Commentary*, eds. G. Dannemann, R. Schulze, Munich 2020, pp. 188–189.

[33] J. Gwiazdomorski, *op. cit.*, p. 59.

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court to ascertain whether the existing legal relationship corresponds to the consumer's intent as expressed in the said declaration in the consumer contract.

It would seem that the ineffectiveness of consumer contract terms, where the contract cannot remain in force for lack of provisions expected to be present in this type of instrument, results in the non-existence of the legal act (*negotium non existens*). The consumer's consent constitutes a declaration of intent embracing contractual provisions rendered ineffective *ipso iure*. Therefore, the requirement of the consumer's consent does not alter the concept of the legal act, and no adjustment of that concept is required.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy. Autor omawia wpływ wypracowanego w orzecznictwie w sprawach konsumenckich uprawnienia uzależniającego nieważność umowy od woli konsumenta na cechy sankcji nieważności czynności prawnej. Problem badawczy dotyczy rozwoju tradycyjnych instytucji prawa cywilnego: sankcji nieważności czynności prawnej oraz wykładni oświadczenia woli. Celem jest określenie, czy omawiane uprawnienie powoduje wymóg subiektywnej wykładni oświadczenia woli konsumenta w umowie konsumenckiej i czy w związku z tym wymagana jest korektura pojęcia czynności prawnej. Badanie ma zasięg krajowy i unijny, gdyż dotyczy problematyki wynikającej z prawa Unii Europejskiej. Artykuł ma wartość poznawczą zarówno dla nauki, dotyczy bowiem aktualnego problemu teoretycznoprawnego, jak i dla praktyki, ze względu na liczne orzecznictwo w sprawach konsumenckich.

Słowa kluczowe: konsument; niedozwolone postanowienia umowne; bezskuteczność; nieważność; subiektywna wykładnia woli