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Professor Jan Gwiazdomorski's Concept of the Objectivisation of the Notion of Declaration of Intent under Civil Law*

Profesora Jana Gwiazdomorskiego koncepcja obiektywizacji pojęcia oświadczenia woli w prawie cywilnym

ABSTRACT

The subject of this article is a description of the origins, analysis of the content, and assessment of the impact on contemporary Polish civil law doctrine of the scientific view formulated by Professor Jan Gwiazdomorski, one of the leading Polish civil law scholars of the 20th century, which boils down to the postulate of an objectified approach to the concept of declaration of intent under civil law. The analysis includes a brief presentation of the normative, axiological, and theoretical-legal conditions for defining the concepts of legal action and declaration of will. The discussion aims to demonstrate the validity of Professor Gwiazdomorski's concept, which, despite the passage of many years since its formulation, remains relevant, and its influence on the development of contemporary Polish civil

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law scholarship. Professor Gwiazdomorski's concept is referred to by proponents of treating a legal act as a conventional act. The postulate of including an objective factor in the concept of a declaration of will is currently justified by the necessity and need to protect the trust of participants in legal transactions in the content of legal acts. Thus, Professor Gwiazdomorski's concept, formulated over half a century ago, is now applied in legal constructs for the protection of consumers against unfair (abusive) contractual provisions.

Keywords: legal act; declaration of intent; principles of civil law

INTRODUCTION

For nearly a century, a debate has been unfolding within modern Polish civil law scholarship – often a significant contributor to the European continental tradition of private law – concerning the general concept of a legal act and the role of the notion of declaration of intent within that framework. Professor Jan Gwiazdomorski made an important contribution to this scholarly discussion, and his doctrinal position, articulated in the paper titled *Próba korektury pojęcia czynności prawnej* (*An Attempt at Revising the Concept of the Legal Act*), has exerted a lasting influence on the development of Polish civil-law doctrine and on the practice of civil-law application.[1]

The general notion and doctrinal concept of a legal act are shaped by a normative background defined today by the provisions of the Civil Code,[2] particularly Articles 56 and 60, as well as by an axiological one, discernible through an analysis of the fundamental principles of civil law and of the features that determine its character as a branch of private law. The foundational premise is that civil law subjects possess the capacity to autonomously establish binding civil law relations through legal acts; indeed, a private legal act produces legal effects (Article 56 CC).

A fundamental component of the normative construct and doctrinal concept of the legal act is the "intent of the person performing the act", which "may be expressed" in any form (Article 60 CC). Consequently, every legal act encompasses a declaration of intent; yet the relationship between these two concepts, determined by their interdependence, has been a matter of jurisprudential controversy.

Within the process of conceptualising and developing the theory of legal acts, the declaration of intent was initially interpreted through the so-called theory of intent, later supplanted by the theory of declaration. In Polish legal scholarship, the declaration theory initially gave rise to several volitional approaches, in which the declaration of intent was regarded as an expression of the will to bring about

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

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

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legal effects. Critics of the volitional approach, among them Jan Gwiazdomorski, opposed that view and advanced several objectivised concepts of the declaration of intent, differing in detail but united in their emphasis not on the internal intent of the declaring party, but on the external manifestation of that party's conduct (performance of a legal act).

Attention should likewise be drawn to the axiological context of the notions of the legal act and the declaration of intent. Civil law is in the domain of private law, as an individual's conduct, assuming the form of a legal act, which is both individual and private, has constitutive force, being regarded as an event that produces binding legal effects. Continental civil law, formed within the conceptual and structural framework of Roman private law, has over time undergone significant substantive transformations. These changes were driven by the varying degree of need, under different political systems, for the operation of independent and autonomous legal subjects.[3] Civil law has remained anchored in a universal and perennial system of values whose purpose is to endow the positive legal order with rational coherence and to legitimise it in relation to the addressees of its norms.[4] The values and ideas that sustain the modern civil-law order find their fullest expression in the concept and substance of its fundamental principles, which serve as the primary key to discerning the legal values embedded in this branch of law.[5] The salient functions of the principles of civil law manifest themselves most clearly in the processes of legal interpretation and application. Within the framework of a codified legal system and culture, such principles emerge as a product of interpreting the binding provisions of law, yet they are also formulated through the reconstruction of the fundamental postulates, values, and ideas constituting the foundations of the legal system as a whole or of a specific branch thereof. The principles of civil law are thus the outcome of generalising the fundamental normative constructs adopted within civil law, each animated by a shared idea or axiological premise – namely, the pursuit of a moral standard.[6] They embrace the key tendencies and orientations of the adopted legal regulations, shaped by their historical evolution, legal traditions, and entrenched jurisprudential convictions. Their defining feature lies in the fact that both the reconstruction of these principles and the functions they perform are rooted in the universally acknowledged axiological framework of the legal system.[7]

From the foregoing, it follows that the reconstruction of the principles of civil law takes place through the generalisation of specific civil-law regulations, accom-

[3] S. Prutis, *Instytucje podstawowe prawa prywatnego (w opozycji do regulacji prawa publicznego)*, Białystok 2018, p. 18.

[4] A. Doliwa, *Funkcje zasad współżycia społecznego w prawie cywilnym*, Warszawa 2021, p. 63 ff.

[5] M. Kordela, *Zasady prawa jako normatywna postać wartości*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2006, no. 1, p. 42 ff.

[6] A. Bierć, *Zarys prawa prywatnego. Część ogólna*, Warszawa 2012, p. 39.

[7] A. Doliwa, *op. cit.*, pp. 64–65.

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panied by the search for their shared underlying values. The values and fundamental ideas that justify and guide the protection afforded by individual civil-law regulations simultaneously underlie the principles of civil law, including in particular: the principle of autonomy of intent, the principle of the protection of human dignity, the principle of the realisation and protection of private interests through the construct of subjective rights, the principle of legal certainty and security of transactions, and the principle of the implementation of equity by civil law. The general principles of civil law, as reconstructed by legal doctrine, possess a normative dimension – constitutional and pragmatic, yet also an axiological one.

From the axiological perspective of the institution of the legal act, the principle of autonomy of intent assumes particular significance.[8] The nature of civil-law relationships, as well as the essence and function of their legal regulation, consist in the pursuit of establishing individualised legal relations between equal and autonomous subjects, vested with the competence to determine the means by which their legally protected interests are to be pursued.[9] Consequently, the very core of the principle of autonomy of intent consists in a mandate directed to the legislator and to the bodies responsible for the interpretation and application of the law to ensure that every subject of private law enjoys freedom to determine their own legal position by making independent and voluntary choices, among them the performance of legal acts. The normative justification for the principle of autonomy of intent is embodied in Articles 56 and 353[1] CC. The detailed civil-law constructs founded upon this principle operate as instruments for the realisation, within the domain of civil-law relations, of moral values such as individual freedom and legal personality, the capacity for self-determination in private and family life, and the intrinsic dignity of every human being.[10]

THE BINDING FORCE OF LEGAL ACTS – A HISTORICAL OVERVIEW

The binding force of legal acts, understood as the phenomenon whereby an act or conduct of a private individual attains legal significance, represents – together with the construct of subjective rights serving to safeguard individual interests within society and the state – a constitutive element characterising civil law as a branch of private law.

[8] A. Stelmachowski, *Zarys teorii prawa cywilnego*, Warszawa 1998, p. 35, 37, 47.

[9] Z. Radwański, *Teoria umów*, Warszawa 1977, p. 110; idem *Uwagi ogólne o autonomii woli*, [in:] *II Kongres Notariuszy Rzeczypospolitej Polskiej. Referaty i opracowania*, ed. R. Sztyk, Poznań–Kluczbork 1999, p. 263 ff.

[10] M. Grochowski, *Słuszność a autonomia woli – uwagi o nieoczywistej relacji*, [in:] *Aksjologia prawa cywilnego i cywilnoprawna ochrona dóbr*, eds. J. Pisuliński, J. Zawadzka. Warszawa 2020, p. 3 ff.; J. Kaczor, *Zasada autonomii woli w świetle filozofii liberalnej*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2001, no. 1–2, p. 1 ff.

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Civil-law scholarship has long sought to determine the foundation upon which private acts acquire legal significance – why they are binding, produce legal effects, and are recognised and protected (enforced) by the state.

Initially, the concept of the binding force of legal acts was formulated within the framework of the theory of human autonomy of intent, of which the natural-law approach constituted a significant strand. A subsequent stage in the evolution of the theory of autonomy of intent was the emergence of the doctrine of consensualism. Civil law, originally manifested in the historical form of Roman private law, in which certain elements of consensualism were already present, employed the construct of the contract prior to the formulation of a generalised concept of the legal act. It was only modern civil-law doctrine, within the framework of the developed theory of contract, that formulated the general principle whereby consensus constitutes "the most essential and indispensable element of every contractual obligation",[11] thus manifesting the autonomy of intent of the contracting party. The theory of autonomy of intent was characterised by its individualistic and liberal nature. It rested on the premise that human beings are by nature free and equal, and that, consequently, the only legitimate limitation on a person's freedom may arise from their own will expressed in a contract. Human nature was thus regarded as the source and creative force of the legal obligations contained within the contract, while enacted, or positive, law played only a secondary role. Whoever had voluntarily entered into a contract was deemed to have acted justly, and the parties were bound by their agreement, obliged to observe the duties arising from it (*pactum ius facit inter partes*).

With the advancement of social and civilisational changes, which exerted a formative influence on philosophical and doctrinal thought within jurisprudence, the naturalistic theory of autonomy of intent began to yield to normativist theories. The latter were predicated upon the assumption that the binding force of contracts and other legal acts derives not from the autonomy of individual's intent but from the legal system and the norms emanating therefrom. In French legal thought, in the wake of the Code Napoléon of 1804, the prevailing doctrine came to hold that the binding force of a contract is grounded in positive law as an objective fact, rather than in the autonomous and subjective intent of the individual. Under this concept, the binding effect of a contract does not originate in either party's undertaking towards the other, but in the significance that the legal system itself attributes to that undertaking. Thus, the contract becomes law for the parties – but only when it has been concluded lawfully, in conformity with, and on the basis of, the binding norms of the legal system. Respect for the individual's intent, even within the domain of civil (private) law, is not the sole but merely one among many values realised by the modern legal regime. Accordingly, under the normativist concept of the foun-

[11] M. Sośniak, *Rozwój historyczny konstrukcji umowy obligacyjnej*, Katowice 1986, p. 37.

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dation of binding force, legal acts obtain legal significance – and thereby binding effect – by virtue of the legal norms that govern this category of juridical events.[12]

DECLARATION OF INTENT

A declaration of intent represents an essential component of every legal act. Pursuant to Article 60 CC, barring the exceptions provided for by statute, the intent of a person performing a legal act may be expressed by any conduct that adequately manifests that intent, including its disclosure in electronic form (declaration of intent). The cited provision thus indicates that the process of performing a legal act encompasses the articulation and externalisation of the individual's intent – constituting the declaration of intent. It should be further noted that, under Article 56 CC, a legal act produces not only the effects it expressly provides for, but also those arising from statute, from the principles of social coexistence, and from established custom.

Within European civil-law doctrine, the principal theoretical approaches elucidating the nature and meaning of the declaration of intent have included the theory of intent, the declaration theory, and the theory of legal significance.[13]

Under the first theoretical approach, the declaration of intent consists of two components: the internal volitional act of the individual, undertaken for the purpose of producing legal effects, and its external manifestation – jointly constituting the declaration of intent – with the decisive role assigned to the internal act of will.[14]

Conversely, according to the declaration theory, determinative significance is attributed not to the "internal intent", but to its "declaration". Accordingly, a declaration of intent constitutes conduct of a person interpreted in accordance with defined criteria, enabling an inference as to that person's legally relevant intent, irrespective of whether, in a given instance, the individual in fact possessed the internal volition corresponding to the declaration.[15]

Ultimately, under the theory of legal significance, "internal intent" and its "declaration" are not to be set in opposition; rather, it should be assumed that the legal effect of a legal act arises from a unified act that may be described as "intent materialised in declaration".[16]

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[12] Z. Radwański, [in:] *System Prawa Prywatnego*, vol. 2: *Prawo cywilne – część ogólna*, ed. Z. Radwański, Warszawa 2008, p. 6.

[13] *Ibidem*, p. 14 ff.

[14] A. Jędrzejewska, *Koncepcja oświadczenia woli w prawie cywilnym*, Warszawa 1992, p. 10 ff.

[15] *Ibidem*, p. 14 ff.

[16] Z. Radwański, [in:] *System Prawa Prywatnego…*, p. 15.

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In earlier Polish civil-law doctrine, developed within the framework of the 1933 Code of Obligations,[17] the concept of the legal act did not expressly isolate the declaration of intent, and the two notions remained distinguishable. The prevailing view held that "an essential component of every legal act is the declaration of intent to achieve a given legal outcome; therefore, in the broadest sense, legal acts may be referred to as declarations of intent".[18] Under the 1964 Civil Code, however, the prevailing view came to distinguish between the two notions, recognising that the factual performance of a legal act comprises, in addition to the constitutive element of the declaration of intent, certain supplementary elements prescribed by law – such as the delivery of an item, an entry in the land and mortgage register, or the participation of a public authority.[19]

A resolute proponent of differentiating the notion of a declaration of intent from that of a legal act was Jan Gwiazdomorski,[20] whose concept and the arguments formulated in its justification have significantly influenced the development of contemporary civil law scholarship.[21] According to Zbigniew Radwański, the notion of the legal act, in contrast to that of the declaration of intent, is potentially open – both to distinct juridical events category-wise and to a multiplicity of declarations of intent making up a single legal act. The essential meaning of any legal act lies in the fact that the legal system envisages legal outcomes only upon its performance (Article 56 CC).[22]

JAN GWIAZDOMORSKI'S VIEW ON THE ESSENCE OF THE DECLARATION OF INTENT – A TURNING POINT IN POLISH LEGAL THOUGHT

In his 1973 article, already cited above, Jan Gwiazdomorski levelled a critique of those concepts of the declaration of intent which regarded the internal intent of the actor – the one performing the legal act – as the causal source of the legal effects of such a private act.[23] In the cited work, Gwiazdomorski articulated a notion of the declaration of intent aligned with the proposal of the so-called declaration theory. As he put it, "a declaration of intent is any conduct of a person (…) from

[17] Regulation of the President of the Republic of Poland of 27 October 1933 – Code of Obligations (Journal of Laws 1933, no. 82, item 598, as amended).

[18] F. Zoll, *Zobowiązania w zarysie według polskiego Kodeksu zobowiązań*, Warszawa 1948, p. 16.

[19] A. Wolter, *Problematyka ogólna czynności prawnych w Kodeksie cywilnym*, "Państwo i Prawo" 1964, no. 11, p. 670.

[20] J. Gwiazdomorski, *op. cit.*, p. 57 ff.

[21] However, Adam Szpunar (*Uwagi o pojęciu czynności prawnej*, "Państwo i Prawo" 1974, no. 12) argued in favour of associating the legal act with the declaration of intent.

[22] Z. Radwański, [in:] *System Prawa Prywatnego…*, pp. 33–34.

[23] J. Gwiazdomorski, *op. cit*.

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which it results – having regard to the attendant circumstances, the principles of social coexistence, and established custom – the intent to manifest a determination to produce a specific legal consequence". He emphasised that "in the foregoing definition, the notion of the declaration of intent is formulated in objective rather than subjective terms. For, in this definition, the emphasis is placed not on the intention – the inner intent – of the declaring person, but on how that person's conduct is manifested outwardly (…); whether from that conduct there may be inferred not only the intent to produce a particular legal effect, but also the determination to manifest that intent precisely through the specific act undertaken".[24]

The doctrinal current initiated by Gwiazdomorski, which objectivised the concept of the declaration of intent within Polish civil law, has come to dominate contemporary Polish scholarship on legal acts and continues to develop in creative ways.[25] Particularly pertinent and accurate – inasmuch as they respond to the contemporary challenges of civil-law transactions – are concepts founded upon the objectivising element of this notion, subordinating the juridical construct of the declaration of intent to the principle of protection of trust. By way of example, Anna Jędrzejewska perceives the essence of the declaration of intent in "the justified expectation arising from the conduct of a person initiating the process of making a declaration of intent",[26] particularly within the so-called mass transactions.

DEFINITIONS OF THE LEGAL ACT IN POLISH CIVIL LAW SCHOLARSHIP – THE INFLUENCE OF JAN GWIAZDOMORSKI'S CONCEPT ON CONTEMPORARY DOCTRINE

In all classical definitions of the legal act articulated within Polish civil-law doctrine, the volitional element occupies a significant place.

On the basis of his objectivised conception of the declaration of intent, Jan Gwiazdomorski defined the legal act as a factual state encompassing at least one declaration of intent, which objective law recognises as both the cause and the means of producing such legal effects as objective law deems intended by the person undertaking the act. Adam Szpunar followed the approach advanced by Gwiazdomorski, defining the same as "human conduct producing legal effects which objective law considers to have been intended by the parties submitting the relevant declaration of intent".[27]

The foregoing marked a departure from the earlier approach to defining a legal act, which placed emphasis on the subjectively conceived volitional element. This

[24] *Ibidem*, pp. 65–66.
[25] Z. Radwański, *Teoria umów*…, p. 37 ff.
[26] A. Jędrzejewska, *op. cit.*, p. 174 ff.
[27] A. Szpunar, *op. cit.*, pp. 13–14.

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was how Stanisław Grzybowski understood the legal act, describing it as "an act undertaken by a person for the intent of producing certain legal effects which could not have arisen at all without such intent".[28] Similarly, according to Aleksander Wolter, the legal act may be seen as "a factual situation covering at least one declaration of intent designed to create, modify, or extinguish a specific civil-law effect. To this factual situation the law attaches not only the consequences expressed in the declaration itself but also those lying beyond its scope, deriving instead from statutory provisions, the principles of coexistence, or established custom. In concise terms, the legal act may be defined as a juridical event marked by a deliberate act of human conduct directed toward the attainment of a specific legal effect".[29]

The latest civil-law scholarship generally aligns with Gwiazdomorski's stance, arguing that definitions grounded in the volitional element and employing psychological terminology misleadingly suggest that the inner experiences conveyed by such expressions constitute an inherent feature of every legal act. At the same time, it has been noted that the alternative method of defining a legal act – one that merely refers the crucial issue of the declaration of intent to the legal system in force – diminishes its explanatory value.

Seeking to overcome the shortcomings of the purely volitional approach while retaining the advantages of the objectivised concept of the declaration of intent, the most recent *System of Private Law* proposes the following definition of legal act: A legal act is a conventional act, constructed by the legal system, performed by a subject of civil law, the content of which determines – at least in its essential part – its legal consequences. This definition highlights the essential meaning of the declaration of intent, which is the private regulation of a civil-law relationship, yet without resorting to ambiguous, psychologically laden terms such as "intent", "purpose", or "desire", while at the same time inherently linking the legal act to the legal system itself.[30] Such an approach to the concept of the legal act stems from the adoption of the notion of the conventional act,[31] the legal significance of which arises not solely from its content but also from the elements specified in Article 56 CC. Advocates of conceptualising the legal act as a conventional act stress that "a legal act is a conventional act based upon a declaration of intent, through which civil law subjects, in the manner and subject to the conditions prescribed by law, produce legal effects within the domain of civil law".[32]

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[28] S. Grzybowski (ed.), *System Prawa Cywilnego*, vol. 1: *Część ogólna*, Wrocław–Warszawa 1985, p. 479.

[29] A. Wolter, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1986, p. 276.

[30] Z. Radwański, K. Mularski, [in:] *System Prawa Prywatnego…*, p. 60.

[31] *Ibidem*, p. 30 ff.

[32] M. Gutowski, *Nieważność czynności prawnej*, Warszawa 2017, p. 17.

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CONCLUSIONS

The concept advanced by Jan Gwiazdomorski and objectivising the notion of the declaration of intent as a constituent element of every legal act forms the foundation of contemporary Polish scholarship on juridical acts. This theoretical construct demonstrated particular validity in the circumstances of the profound socio-economic transformation that commenced in Poland towards the end of the 20th century. By grounding the notion of the declaration of intent in an objectivising element, it became possible to ensure the protection of the trust that participants in civil-law transactions place in a given declaration of intent. This protection is reflected in the determination of the rights and obligations of the parties to a civil--law relationship on the basis of the legitimate expectation engendered by the conduct of the party initiating the declaration process, that is, performing the legal act. Such an approach unquestionably advances the realisation of the principle of justice (equity) under private law, including contractual justice.

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Regulation of the President of the Republic of Poland of 27 October 1933 – Code of Obligations (Journal of Laws 1933, no. 82, item 598, as amended).

ABSTRAKT

Przedmiotem artykułu jest opis genezy, analiza treści i ocena wpływu na współczesną polską doktrynę cywilistyczną sformułowanego przez Profesora Jana Gwiazdomorskiego, jednego z czołowych polskich cywilistów XX w., poglądu naukowego, który sprowadza się do postulatu zobiektywizowanego ujmowania pojęcia oświadczenia woli w prawie cywilnym. Elementem analizy jest skrótowe przedstawienie normatywnych, aksjologicznych i teoretycznoprawnych uwarunkowań definiowania pojęć czynności prawnej oraz oświadczenia woli. Podjęte rozważania mają na celu wykazanie trafności koncepcji Profesora Gwiazdomorskiego, która pomimo upływu wielu lat od jej sformułowania wciąż zachowuje aktualność, a także jej wpływu na rozwój współczesnej nauki polskiego prawa cywilnego. Do koncepcji Profesora Gwiazdomorskiego nawiązują zwolennicy ujmowania czynności prawnej jako czynności konwencjonalnej. Postulat uwzględniania w pojęciu oświadczenia woli czynnika obiektywnego współcześnie znajduje uzasadnienie w konieczności i potrzebie ochrony zaufania do treści czynności prawnej uczestników obrotu. Tym samym sformułowana ponad pół wieku temu koncepcja Profesora Gwiazdomorskiego znajduje dziś zastosowanie w konstrukcjach jurydycznych ochrony konsumenta przed niedozwolonymi (abuzywnymi) postanowieniami umownymi.

Słowa kluczowe: czynność prawna; oświadczenie woli; zasady prawa cywilnego