СТАТЬИ

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Selected institutions of the General part of the Polish Civil Code

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The article first outlines the basic features of Polish legal culture from the perspective of the philosophy of law and theory of law. Polish legal culture is quite commonly described as moderately positivist. The validity of natural law, and especially the superiority of the norms of natural law over the norms of positive law, is not recognized, however, the legislature requires that moral considerations be taken into account in the process of enacting, interpreting and applying the law. It has been emphasized that Polish legal culture has created very advanced tools enabling an almost algorithmic interpretation of regulations. However, the practice differs quite significantly from the theory. The article then provides an overview of selected institutions of the General part of the Polish Civil Code: subjective rights (with a particular emphasis on the abuse thereof), civil-law protection of personal interests, acts in law (with a particular emphasis on the capacity to perform acts in law, making declarations of intent, interpretation of declarations of intent and defects of declarations of intent), procedures for concluding contracts, conditions, time limit and limitations of claims. The Civil Code can be described as a creative, original compilation of regulations adopted from the Napoleon Code, the German Civil Code and the Austrian Civil Code. The institution of the abuse of subjective rights resembles, at least in terms of the terminology used in the Code, solutions known from Soviet law; other institutions, not taking into account their specific features, fall within the "standard" European legal solutions. The article also presents the most important ruling of the Supreme Court, which determines the practice of applying some of the provisions that constitute the above-mentioned institutions.

Keywords: Polish Civil Code, rights, abuse of rights, civil-law protection of personal interests, legal action, procedures for concluding contracts, conditions, deadlines, statute of limitations.

Introduction

The aim of this article is to present to the Russian Reader selected institutions of the General part of the Polish Civil Code. Obviously, by reasons of the volume of the article, only these institutions can be presented. At times, the paper also raises issues of com-

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parative legal nature, confronting solutions adopted in Poland with more widely known legal systems, especially the German one. An attempt will also be made to show developmental trends in Polish law, which manifest themselves both in legislative changes and in the gradually evolving case-law of the Supreme Court. The nature of the work makes it legitimate to refer to works that are most representative of the Polish legal culture, especially the monumental System of Private Law with tens of thousands of pages, and to such Supreme Court rulings that have shaped the understanding of selected legal provisions by lower courts.

To fulfil the task of this paper, it is necessary to present the Reader with some of the most elementary information about the Polish legal culture, which, on the one hand, is shaped by the Civil Code in force, and, on the other, has shaped the Code itself. Natural law is rather rejected as a source of binding law, especially a source of higher ("derogatory") power than positive law. The Polish Constitution of 1997 provides in Art. 87 et seq. closed catalogue of sources of law, which may be established only by the bodies specified by the Constitution, and only in the forms indicated by the Constitution. The "moderate" nature of the positivism of the Polish legal culture is manifested in the fact that no one questions the role of non-legal values, especially the dignity of every human being (Art. 30 of the Constitution) as a factor limiting the legislator's freedom in shaping the content of legal norms (the Constitutional Tribunal exercises control in this regard) and, on the other hand, significantly influencing the process of interpretation of individual legal provisions. For a lawyer-practitioner, an observation may be more interesting that the practice of interpreting legal provisions by courts, including the Supreme Court, is characterized by considerable (and, as it seems, increasingly deepening) freedom, manifested, *inter alia*, in more and more frequent departure from the linguistic result of interpretation in favour of a functional result justified by the content of the moral norms accepted by a given court. This freedom remains in considerable contrast to the concept of interpretation which dominates (at least, in the declarative layer) in the Polish legal culture, and which, drawing extensively on analytical philosophy, presents the interpretation of legal provisions as an algorithmized process in which moral norms allow for the rejection of the linguistic result, nevertheless these are specifically construed moral norms, and the linguistic result can only be rejected in a narrowly defined scope with strictly defined premises. Incidentally, it can be mentioned that the dominant (declarative) concept of interpretation is undoubtedly one of the most coherent and developed concepts of interpretation in the modern world, probably superior in every respect to the German concepts known to the author of this paper. Especially, the Reader embedded in logic and logicalizing currents of analytical philosophy will not consider the time spent on familiarising themselves with this concept, even in its "textbook"[1] version, a waste of time. Returning to the mainstream considerations, the positivist nature of the Polish legal culture quite often breaks down in the light of specific court judgments, motivated more by the private sense of justice of individual judges than the content of legal regulations. It should be added that rulings, even very distant from the content of the regulations on the basis of which they were rendered, meet — although not always — with the approval of a legal doctrine (or, in simplified terms — academic lawyers). The obvious consequence of these phenomena is that adequate knowledge of at least some institutions of private law in general, and the General part of the Civil Code in particular, must be grounded not only (or even, not so much) on the knowledge of legal provisions, but also on the current judicial decisions[2].

[1] *Zieliński M.* Wykładnia prawa. Zasady, reguły, wskazówki. Warszawa: Wolters Kluwer, 2020.

[2] As for the issues raised here, see representatively: *Ziembiński Z.* Problemy podstawowe prawoznawstwa. Warszawa: PWN, 1980; *Wronkowska S., Ziembiński Z.* Zarys teorii prawa. Poznań: Ars boni et aequi, 1997. — From a slightly different theoretical perspective, see also e. g.: Morawski L. Główne problemy współczesnej filozofii prawa: prawo w toku przemian. Warszawa: LexisNexis, 2005.

Moving on to less general considerations, it should be noted that the Civil Code is considered to be an essential part or element ("core") of civil law, which, in turn, is an essential component of private law[3]. It is impossible to present any convincing criterion for distinguishing between civil law and private law. This is a purely conventional difference. Its goal is to emphasize that the legal matter which has traditionally remained outside the Civil Code (especially, commercial company law), and which for this reason cannot be covered by the term "civil law", is (along with civil law) part of a large branch of private law. This is important for at least two reasons. First, the principle that civil law entities are autonomous from one another is widely recognized as the most elementary characteristic distinguishing private law from public law. Autonomy is understood to mean that one entity is not subject to the sovereign power of the other entity (which cannot, by its will, establish binding standards of conduct for others). Subordination to someone else's competence may, in principle (here, parental authority may be the exception), result from a voluntary act in law (especially a contract, e. g. the parties to the contract agree that the debtor will have to pay the debt on the request of his creditor). It is, in fact, a very Kantian idea — private law entities in general, and civil law entities in particular, are governed by their own (self-imposed) law. Autonomy, as the fundamental factor defining private law, is thus understood in a formal way; it is not a matter of whether a given entity can actually perform a specific act in law (the most trivial limiting factor will be the poverty of the entity; if someone has no money, they will not buy an expensive car). Finally, it is also important that private law is quite consistently opposed to public law (which assumes that a citizen is subject to the competences of public authorities)[4]. A practical consequence of this distinction is that the institutions of the Civil Code may not, as a rule, be used, even by analogy, for public-law relations (e. g. a private-law claim against the State Treasury for the payment of compensation for expropriated real estate cannot be deducted along with a public-law claim by the State Treasury for the payment of outstanding tax). This is, however, a principle from which there are numerous exceptions. In particular, it is said that at least some of the institutions of the Civil Code may be treated as a model or matrix for similar institutions of public law, and the provisions constructing these institutions may be applied in the area of public law by analogy. In the perspective of the General part of the Civil Code, which is of interest to us, this mainly concerns the condition (Art. 89 et seq. of the CC), power of attorney (Art. 98 et seq. of the Civil Code (hereinafter CC)) and the method of calculating time limits (Art. 110 et seq. of the CC).

To provide the Reader with a fuller picture, the above remarks should be supplemented with some historical information. In the reborn Republic of Poland, as many as five different legal systems were in force in its various areas in 1918 (German law, contained mainly in the German Civil Code of 1896, Austrian law, a slightly modified Napoleon Code, Russian law and Hungarian law). This caused an obvious chaos that could only be overcome by codifying the law for the area of the entire State. However, as we know, codification is an incredibly difficult task, hence, the first step (apart from establishing something like private international law — but regulating the relations between the legal systems in force in various areas of the State) was to unify the law for selected issues or areas. At the same time, Polish legislators could draw on the achievements of several different legal systems (primarily — German and French law, and, to a lesser extent, Austrian and Russian law), confronted with specific social effects of specific regulations in individual

[3] See representatively: *Safjan M.* Pojęcie i systematyka prawa prywatnego // System Prawa Prywatnego. Prawo cywilne — część ogólna: in 23 vols. Vol. I / ed. M. Safjan. Warszawa: C. H. Beck, 2012. P. 32 et seq.; *Radwański Z., Olejniczak A.* Prawo cywilne — część ogólna. Warszawa: C. H. Beck, 2019. P. 1 et seq.

[4] As for the eternal discussions on the distinction between public law and private law, see the original *Szczepaniak R.* Sens i nonsens podziału na prawo publiczne i prywatne // Państwo i Prawo. 2013. No. 5. P. 31 et seq.

areas of the state. The majority of private law was unified, of which the Code of Obligations of 1933 was, in the common opinion, the most outstanding achievement. The vast majority of this regulation was transferred without major changes (and often without any changes) to the Civil Code, which was passed in 1964 and became effective on 1 January 1965. This has quite a lot of practical consequences. First of all, the Polish Civil Code is a thoroughly eclectic regulation, combining elements of various legal systems, modified at the same time to ensure internal consistency of regulations. Metaphorically, and perhaps with a certain degree of exaggeration, it can be said that it is like an alloy obtained from several different metals placed in a single vessel and melted together, with quite a few original, native filings added to the foreign pieces of metal. Secondly, drawing on solutions that sometimes date back to the beginning of the 19th century, it is not so much an outdated act (after all, the majority of civil law is, perhaps, a variation on the Digests) but not taking into account a number of new, previously completely unknown economic, social and technological phenomena. At least, some of these phenomena require the legislator's reaction — sometimes relatively simple (e. g. an electronic form of legal transactions as a reaction to the spread of internet trading) to extremely complicated (e. g. serious questions posed by the increasing atomization of the family in the field of inheritance law). The amendments to the Code, of which there have been several dozen since its inception, are more or less successful. However, even successful amendments tear more and more the internal coherence of the Code (e. g. alongside the old "principles of social coexistence" taken from the Soviet legislation, "good manners" and "considerations of equity" have appeared; the relationship between the scope of these terms is highly unclear), making its interpretation increasingly contentious and the case-law less and less predictable. In the Polish legal culture, the idea of the need to establish a new Civil Code is maturing. However, the details of how to implement this idea are different and not necessarily compatible. There is also a lack of a single centre with appropriate competences and resources, more tangible than just good intentions, necessary to design a new codification. Therefore, one should not expect a new Code in the next few years or even decades. Thirdly, the number of extra-codical legal acts (especially those known as comprehensive acts regulating a given area of social relations as comprehensively as possible, consisting of both private, administrative and criminal provisions, e. g. Geological and Mining Law, Water Law) is growing, containing a civil law regulation, which could just as well, and in some cases even better, be contained in the Civil Code. From a practical point of view, this forces the interpreter to constantly check whether the "core" of the code regulation is not supplemented elsewhere or, even more so, modified. By way of example, the Reader will come to the most inaccurate conclusions by reading the provisions of the contract of carriage (Art. 774 et seq. of the CC), if he does not confront the Code with the Transport Law (extra-codical regulation). Among the issues of the General part of the Civil Code that are of interest to us, Art. 59 of the CC can be pointed out, modified to a significant extent for restructuring and bankruptcy proceedings.

1. Subjective right

The Polish civil law, as in the case of many, if not almost all systems of European law, "thinks" in the category of subjective rights. All disputes over the "correct" understanding of the term "subjective right", led primarily in the 19th century in German civil-law studies, found their reflection or repercussions in the Polish legal system. For the sake of clarity, I believe, it is worth separating the philosophical issues from the linguistic ones, however closely related they may be. From a philosophical perspective, "subjective right" is understood in the spirit of legal positivism (the prevailing philosophical and legal assumption

in Poland). Thus, someone is entitled to some right (e. g. ownership of a thing, a claim against a specific debtor), as long as this right is granted (or rather — constructed) by a specific provision of an applicable legal act. Again, this is only a rule, the least controversial exception of which would be the creation of subjective rights protecting new personal interests discovered by doctrine and case-law, having a clear origin in natural law. As regards the language perspective (the meaning of the term "subjective right"), it is assumed that this is a legal situation designated by the applicable standards for entities and protecting their legally recognised interests. This situation consists of psychophysical or conventional acts of a given subject, which he may (but does not have to) undertake, and with which the corresponding obligations of some other subject or subjects are coupled. The subjective right is, as a rule, protected by state coercion, implemented as a consequence of bringing an action to the court by the subject of a given law (e. g. a creditor whose claim has not been satisfied by the debtor), although the system also knows natural obligations which are not secured by the sanction of state coercion (e. g. time-barred claims)[5]. As it is clearly seen, the defining aspect is the category of interest derived from R. Jhering, but this does not refer to every interest, only the "legally recognised" one.

There are different kinds or types of subjective rights in the Polish civil law. There are also a number of divisions and typologies that order (typologize) subjective rights according to various criteria. These distinctions, as well as divisions and typologies are common in other legal systems (e. g. distinction of claims, right to alter legal relationship by unilateral declaration and pleas, as well as division into absolute and relative rights). Probably, the division into absolute rights (for which the *numerus clausus* principle applies, such as ownership) and relative rights (especially claims) has the greatest significance for legal practice. The recognition of accessory rights (e. g. surety) also plays a vital role.

From the perspective of legal practice, the problem of abuse of a subjective right is of paramount importance. Pursuant to Art. 5 of the CC, one cannot exercise a right in a manner which would contradict its socioeconomic purpose or the principles of social coexistence. This is a provision modelled on the former Soviet Civil Code. "Principles of social coexistence" are understood these days as moral norms as uniformly as possible accepted in society, at the same time not contradicting the axiology of the legal system. The courts are generally considered to be cautious and restrained in the application of Art. 5 of the CC. Consequently, this provision does not jeopardise legal security.

2. Personal interest

The General part of the Civil Code regulates the issue of personal interests. According to a definition representative for the Polish civil law, these are values recognized by the legal system, including the physical and mental integrity of a person, his or her individuality, dignity and position in society, which is a premise for the self-fulfilment of a human being[6]. The catalogue of personal interests indicated in Art. 23 of the CC, is of an open nature. The legislator indicates such personal interests as health, dignity, freedom, freedom of conscience, surname or pseudonym, image, secrecy of correspondence, inviolability of home, and scientific, artistic, inventor's and rationalizing achievements. Case-law and doctrine periodically discover new personal rights not indicated in the open catalogue of Art. 23 of the CC. Sometimes these are undisputed interests, such as life, the cult of remembrance of the closest deceased, or gender; sometimes they are extremely questionable and contentious, such as the right to an unspoiled environment or a bond with

[5] See, in particular: *Radwański Z., Olejniczak A.* Prawo cywilne — część ogólna. P. 84 et seq.

[6] See in particular: Ibid. P. 160 et seq. — See also representatively: *Pazdan M.* Dobra osobiste i ich ochrona // System Prawa Prywatnego. Prawo cywilne — część ogólna. Vol. I. P. 1225 et seq.

the closest family members. Art. 24 of the CC, on the other hand, regulates claims for the protection of personal interests. The subject of a given personal interest only needs to demonstrate that he or she is entitled to a given personal interest and that it has been infringed (possibly threatened with infringement). The fulfilment of these conditions gives rise to the presumption that the infringement of the personal interest (or the threat of its infringement) was illegal. The other party to the dispute must then prove that its behaviour was not unlawful (because, among others, it took place on the basis of a provision of applicable law or the consent of the entitled party). Moving on to the presentation of individual claims, anyone whose personal interest has been threatened with infringement may demand the cessation of actions that may infringe upon the personal interest (Art. 24 § 1 sentence 1 of the CC). On the one hand, this claim ensures far-reaching protection of personal interests (in their "foreground"), and, on the other hand, it creates a risk of introducing preventive censorship. If an infringement has taken place, it can be demanded that its effects be remedied, and in particular that a statement be made in an appropriate form and content, such as an apology or expression of regret (Art. 24 § 1 sentence 2 of the CC). Simplifying the issue, in the case of a culpable violation of personal interests, it is also possible to demand payment of monetary compensation or an appropriate amount for the social purpose indicated by the aggrieved party (Art. 24 § 1 sentence 3 of the CC). The amounts of compensation granted in Poland in particularly drastic cases of health impairment reach one million zlotys (approx. $ 250 000).

3. Acts in law and other civil-law events

As it is commonly known, each developed system of civil law connects the emergence of specific legal effects with various events which are called legal events because of the legal effects attributed to them. In the Polish legal culture, following a twentieth-century analytical philosophy, these events are divided primarily into psychophysical and conventional acts, i. e. (bearing in mind the huge simplification) such human acts which acquire their meaning thanks to the customary or clearly established rules that impose a specific content to be associated with these deeds. For example, hammering a nail into a wall has the status of a psychophysical activity. It will acquire the status of a conventional act if it is carried out in accordance with the rules of the Morse code. Only then a specific meaning will be associated with this activity. Among conventional acts having the nature or status of legal events, the most important role is played by acts in law (understood almost synonymously with the German *Rechtsgeschäft* — legal transactions), among which contracts play the vital role. A necessary element of any act in law is a declaration of intent, understood (according to the dominant, representative position) in the spirit of the former German theory of declaration (*Erklärungstheorie*), as the behaviour of a civil law entity which, on the basis of social rules of meaning, expresses the intention to produce certain legal effects — regardless of whether or not the entity which behaved in such a way actually had a psychological intent to produce certain legal effects[7].

In order to clearly present the issue of legal transactions, it seems advisable to put outside the brackets some of the most general provisions devoted to this issue. According to Art. 56 of the CC, a legal transaction produces legal effects not only expressed therein, but also resulting from the provisions of law, principles of social coexistence and established customs. In fact, this provision implies that a legal transaction produces effects expressed not only in its essential element — a declaration of intent, but may also produce

[7] For these issues, see representatively: *Radwański Z., Mularski K.* Zagadnienia ogólne czynności prawnych // System Prawa Prywatnego. Prawo cywilne — część ogólna: in 23 vols. Vol. 2 / eds Z. Radwański, A. Olejniczak. Warszawa: C. H. Beck, 2019. P. 1 et seq.

legal effects attributed to a given declaration through the provisions of applicable law, the most commonly accepted morality ("principles of social coexistence") and established customs. An additional factor indicated by Art. 384 § 1 of the CC are the provisions on the standard contract. For example, when concluding a sales contract, the parties often only agree on the item being sold and the price; a number of other legal consequences, e. g. related to the warranty for a defect in goods, will result from the provisions of the act. An important practical consequence of this solution is that the parties do not have to (as is the case in the Anglo-Saxon systems) precisely define their legal relationship. If they limit themselves to defining the most important aspects of the legal relationship, the remaining "part" of it will be fulfilled by the law (to a lesser extent by the morality and established customs). The second of the aforementioned provisions is Article 58 of the Civil Code, which sets out the conditions for the invalidity of a legal transaction. Under this provision, a transaction which is contrary to the law, the principles of social coexistence and which seeks to circumvent the law is invalid. If only part of the legal transaction is null and void, the remaining part remains in force unless the circumstances indicate that without the invalid provisions, the transaction would not have been performed at all. The matter only seems simple when reading the regulation. In practice, specific grounds for invalidity raise many doubts[8]. In particular, a legal transaction which is contrary to the law will not always prove to be null and void. Invalidity is usually not caused by a contradiction with public law provisions that were not aimed at counteracting actions contrary to them (e. g. a contract with an entrepreneur who has not obtained an administrative permit to conduct a given activity will usually be valid, while such an entrepreneur may be punished, for example, with a fine). Finally, Article 64 of the Civil Code should be mentioned. According to this provision, a final court judgment stating the obligation of a specific entity to make a specific declaration of intent (such obligation may arise primarily from a preliminary agreement, but also, for example, from an agreement concluded by way of an auction or a tender, for the validity of which it is necessary to fulfil specific conditions set out in the Act, especially to maintain a specific form), replaces this declaration. According to the established case-law, in cases where the court maintains the claim by the claimant in full, the judgment replaces not only the declaration of intent to be submitted by the defendant, but the entire contract — which allows the claimant to save, above all, notarial costs of the contract (assuming that the contract should be concluded in the form of a notarial deed)[9].

The issue with which a lecture on acts in law usually begins is the capacity to perform acts in law. This problem has been regulated similarly to other systems of continental law. Minors who are under the age of 13 are deprived of capacity for acts in law, but contracts concluded by them in petty, current matters of everyday life become valid, provided they have been performed and have not resulted in gross harm to the minor (Art. 14 § 2 of the CC). Persons over 18 years of age acquire full (unlimited) capacity to perform acts in law, as in the case of women who entered into a marriage after the age of 16 upon the consent of the guardianship court (Art. 10 et seq. of the CC). The legal capacity of minors who are 13 and under 18 is limited. Apart from the details specified by law, such persons may not perform unilateral legal transactions (including wills), whereas contracts which lead to an obligation on their part or the disposition of such a person's right require the consent or confirmation of a legal representative for their validity. In the Polish legal system, there is an institution of complete incapacitation (resulting in the deprivation of capacity for acts

[8] See, for the most comprehensive presentation: *Trzaskowski R.* Skutki sprzeczności umów obligacyjnych z prawem: w poszukiwaniu sankcji skutecznych i proporcjonalnych. Warszawa: Wolters Kluwer Polska, 2013.

[9] In particular, the decision of the Supreme Court (7) of 07.01.1967. III CZP 32/66. Available at: https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/iii-czp-32-66-uchwala-sadu-najwyzszego-520094450 (accessed: 01.12.2021) and subsequent uniform case-law.

in law, and imposed on persons who, as a result of mental illness, mental retardation or other mental disorders, in particular, alcoholism or drug addiction, are incapable of controlling their behaviour, Art. 13 § 1 of the CC). These institutions in their present shape are generally considered inadequate to contemporary standards of human rights protection and ineffective in practice; serious modifications can be expected in the next few years. In order to have any social effect, an act in law must be communicated to other subjects. For the vast majority of acts in law, the form of communication provided by the legislator is to make a declaration of intent to another person. The only exception in this respect is a last will. A declaration of intent which is to be made to another person is deemed made at the time it reaches that person in such a manner that he could have read its content (Art. 61 § 1 sentence 1 of the CC). Until the declaration is made, it can always be withdrawn. The withdrawal of a declaration of intent does not require any particular form (Art. 61 § 1 sentence 2 of the CC). So if, for example, the declaration of termination of the lease agreement was written by the landlord on 1 July, put in an envelope on 2 July, sent by post a day later and delivered to the tenant's mailbox on 6 July, we will assume that if the tenant returned from holiday on 14 July in the evening, the time of submission of the declaration will not be until 15 July. It was only on that day, in the normal course of business, that the addressee could read the content of the declaration. In the case of declarations expressed in electronic form, it is deemed to be made to another person at the time it is introduced to the means of electronic communication at the addressee's disposal (e. g. the moment when the e-mail reached the addressee's e-mail box; Art. 61 § 2 of the CC). According to the dominant position of science, this provision should be interpreted in the same way as Art. 61 § 1 sentence 1 of the CC — entering a declaration into an electronic means of communication will be deemed as its submission, provided that the addressee could read its content. It should be added that the "other person" referred to in the provision is, in simplified terms, the one who may be affected by the legal transaction, i. e., the other party to the contract.

Interpretation of declarations of intent is another issue to be addressed in this paper. In practice, there are no abstractly understood "declarations of intent" ("legal transactions"). There are only specific declarations expressing the intention to produce certain legal effects (buying a certain item for a certain price, renting another item for a certain rent, etc.); the content of these declarations (more specifically, the content of the standards of conduct that are established on the basis of these declarations or through these declarations) must be determined in the interpretation process. The interpretation of declarations of intent is briefly set out in Article 65 of the CC. In Art. 65 § 1 of the CC, the legislator orders that in the process of interpreting the circumstances (context) in which the declaration was made, the principles of social coexistence (possibly universally accepted moral norms) and established customs be taken into account. In Art. 65 § 2 of the Civil Code concerning the interpretation of contracts, Papinian's sentence from the Digest is literally repeated (*In conventionibus contrahentium voluntas potius quam verba spectanda sunt*, D. 50, 16, 219). On the basis of this provision, probably the most advanced concept of interpretation of declarations of intent was constructed, which seems to have no equivalent in Western European countries[10]. At the same time, it is uniformly accepted by the case-law. Having its source in specific philosophical assumptions and drawing extensively on 20th century philosophy and semiotics, it presents the interpretation of declarations of intent as an algorithmized process taking place in certain phases and guided by specific values — on the one hand, respect for the autonomy of intention of the parties and respect

[10] See: *Radwański Z.* Wykładnia oświadczeń woli składanych indywidualnym adresatom. Wrocław: Ossolineum, 1992; with modifications and additions: *Radwański Z., Mularski K.* Wykładnia oświadczeń woli // System Prawa Prywatnego. Prawo cywilne — część ogólna. Vol. 2. P. 61 et seq.

for the legitimate trust of the addressee of the declaration of intent and the certainty of legal transactions on the other. of course, the whole concept cannot be presented here. It is possible to point out the most important elements. Thus, any declaration of intent (even those that seem "clear" in one sense or another) is subject to interpretation. In the first phase, known as the subjective-individual phase, the interpreter seeks to establish the meaning that the parties have actually attached to the declaration made. This meaning may differ from the meaning that would be assigned to a declaration on the basis of general social rules of meaning (*falsa demonstratio non nocet*). This meaning may be established by various means of evidence, in particular, the testimony of the parties themselves as to how they understood the declaration made and their conduct after the declaration had been made which sometimes shows very clearly how the declaration was actually understood by the entity concerned. In the event that it is not possible to establish the meaning which the parties actually gave to the contract, it is necessary to proceed to the second stage of interpretation, known as the objectified phase. The declaration shall be attributed the meaning which would be accorded to it by a reasonable, diligent and ethical legal body which would be in the place of the addressee. If the addressee agrees with the meaning established in this way, the court will assign it to the declaration of intent, regardless of how it was understood by the entity that made the declaration. Otherwise, the dissent takes place and the contract is deemed not concluded at all.

The concept also places the interpretation of specific types of declarations of intent within the algorithm it has constructed. It is impossible to list all the problems here. As an example, it can be pointed out that the interpretation of unilateral declarations of intent is essentially based on an objective perspective, relativised to the standard understanding of the addressees of a given declaration (e. g. typical customers of an entrepreneur who runs a shop and has made an offer to sell a given product to the public). However, for some declarations (last wills) only the subjective method is used[11]. Finally, certain interpretative directives apply to declarations made between entities of certain nature (e. g. in *in dubio contra proferentem* directive for declarations made by traders to consumers). Specific interpretation directives apply to declarations made in writing.

Another issue that needs to be addressed here are defects of a declaration of intent. Generally speaking, it can be said that the defects of declarations of intent have been constructed quite narrowly in the Polish Civil Code, and much more narrowly than in German law, for example. This is, of course, in line with the objective understanding of declarations of intent that has already been mentioned. The first defect is the lack of consciousness and freedom of the entity making the declaration of intent. Under Art. 82 of the CC, a declaration of intent made in a state which precludes the conscious or free making of a decision and declaring of intent is invalid, regardless of the reasons that caused such a state in the person making the declaration. These may be, for example, statements made during sleep, in agony, malignancy, under the influence of a very high fever, almost complete alcohol intoxication, or in conditions caused by the use of certain drugs. Invalidity of a declaration does not exclude by itself liability for damage caused to someone who has acted with confidence in such a declaration. Art. 84 of the CC regulates the legal effects of a declaration made under the influence of an error which is material if it concerned the content of an act in law (and not any external circumstances to that content[12]) and if it was significant, i. e. it justified the belief that if a given entity did not act under the influence of the error and judged the matter reasonably, it would not have made the declaration of

[11] As regards the interpretation of wills, see in particular: *Radwański Z.* Wykładnia testamentów // Kwartalnik Prawa Prywatnego. 1993. No. 1. P. 5 et seq.

[12] For example, a person who purchased a certain thing for a certain price does not act under the influence of a legally significant error, hoping that he will resell it at a profit if he does not find a buyer later.

intent (the error must therefore be the reason for making the declaration). The legislator significantly tightens these premises with regard to declarations made to other entities — and we remember that pursuant to Art. 61 of the CC, almost all declarations of intent have to be made to some entity. An error will only have legal significance if the addressee of the declaration has caused the error (even through no fault of his own), if the addressee knew that the person making the declaration acted under the influence of the error but did not inform the other party about it, and when the addressee could easily notice the error but he did not notice (and thus did not inform the declarant about the error). A deception has legal consequences also when it did not concern the content of a legal transaction and was not material. The last of the defects in declarations of intent is the threat (Art. 87 of the CC). A threat is generally understood as a statement of intention to inflict a certain hostile action on a person if that person fails to make a specific declaration of intent. A threat becomes legally relevant when it is unlawful (e. g. the threat of initiation of a trial and possibly enforcement proceedings against a debtor who has not satisfied his creditor is not unlawful) and serious — i. e. such that the declaring person could have feared that he or another person is in serious danger with regard to a person or property. Therefore, it would not be a serious threat to cast a spell on someone. It should be added that while the lack of consciousness or freedom of the declarant causes the declaration to be invalid, the remaining defects only give rise to a right on the part of the declarant to evade the legal effects of the declaration he has made. This right expires one year after the error or deception is discovered, or one year after the state of fear caused by the threat ceases (Art. 88 of the CC).

The legislator also included an ostensible nature of a declaration of intent to the catalogue of defects thereof (Art. 83 of the CC). If the parties decide that the declaration of intent is not to produce any legal effects, it will be invalid. On the other hand, if the declaration was made to conceal some other act in law, it will be valid as long as the concealed act meets all the validity criteria specified by the legislator, especially with regard to the form. So, for example, if the parties decided that the activity they called "sale" was in fact to be a lease, and the contract concerned a movable property, it should be considered that a lease contract was concluded. The Act does not provide for any special form for concluding a lease contract. On the other hand, if the parties decide that the action called "sale" is in fact to be a donation, and the contract concerns a real property, the contract will be null and void, as the act requires the form of a notarial deed (Art. 158 sentence 1 of the CC). In my opinion, the provision on the ostensible nature of a declaration of intent has no normative significance, as it repeats only what already results from the concept of interpretation *(falsa demonstratio non nocet*) adopted in Polish legal culture.

4. Contracts

From a practical point of view, a contract is by far the most important type of act in law, at the same time, as it seems, causing most of the theoretical problems. The Civil Code does not contain a definition of a contract. In general, it can be said that a contract is a consensual declaration of intent by at least two entities (parties to the contract), expressing the intention to produce certain legal effects. An agreement that creates a contract is commonly known as a consensus[13]. Of course, the principle of freedom of contract applies, clearly expressed in Art. 353^1 of the CC. The parties are not bound by a statutory catalogue of specific contracts, such as, for example, sale, exchange, lease, rental or donation, but they can conclude an agreement of virtually any wording (also those unknown

[13] See, representatively: *Radwański Z., Olejniczak A.* Prawo cywilne — część ogólna. P. 309 et seq.; *Radwański Z., Machnikowski P.* Zawarcie umowy // System Prawa Prywatnego. Prawo cywilne — część ogólna. Vol. 2. P. 423 et seq.

to the law, such as a franchise agreement), as long as the content or purpose of the contract was not contrary to the law, principles of social coexistence or the property (nature) of a given legal relationship, and did not intend to circumvent the law[14]. In the General part, the Civil Code regulates the methods of concluding contracts, i. e. the most typical, most important from the practical point of view, ways of reaching an agreement (consensus).

Among all the procedures for concluding contracts regulated by the legislator, the submission and acceptance of an offer plays a crucial role in legal transactions[15]. An offer is a declaration of intent expressing a firm will to make a contract and laying down at least its key provisions (Art. 66 § 1 of the CC). Therefore, declarations not firm in nature are not deemed offers, such as generally formulated declarations of intent to cooperate in a certain area or advertisements promoting a given product. "Essential provisions of a contract", in simple terms, refer to those elements without which no contract could be concluded. For example, in the case of a sales contract, specification of the item and its price will be such essential provisions; for rent — specification of the object to be rented and the rent to be obtained by the landlord. The contract is concluded by simple acceptance of the offer. The reply of the addressee of the offer, in which he stipulates any changes to the wording of the contract proposed in the offer, is deemed a new offer (Art. 68 of the CC). An exception is provided for offers made in relations between entrepreneurs. Here, a reply to an offer subject to changes or supplements which do not materially alter the content of the offer is considered, in principle, to be acceptance thereof. In this case, the parties are bound by the contract as worded in the offer, subject to the amendments or supplements contained in the reply hereto (Art. 68^1 of the CC). Accepting an offer, just like making it, constitutes a declaration of intent — the addressee's behaviour must indicate the intention to be bound by the proposed contract. Therefore, a lack of response to the offer made cannot, in principle, be considered as acceptance of the offer. The only exception is provided for an offer made between entrepreneurs having permanent business relations, if the offer made falls within the limits of this activity (Art. 68^2 of the CC). In this case, the absence of an immediate response to the offer is considered as acceptance ("implied acceptance"). However, if, according to the custom established or the wording of the offer, there is no requirement for the offeror to receive an express declaration of acceptance from the other party, a contract is concluded if the addressee of the offer starts to perform the contract (Art. 69 of the CC).

Making an offer is binding for the entity that made it. This state consists in the fact that the contract is executed by the acceptance of the offer by its addressee without any additional actions on the part of the offeror. The key question is the question about the time when the binding state ceases and the addressee loses the possibility of concluding a contract by accepting the offer made to him. When answering this question, it should be noted that it is the entity making the offer that may indicate in the offer the time for which it will be binding. If he does not do so, and the offer is made in the presence of the other party or by means of direct remote communication, the offer ceases to be binding if it is not accepted immediately. For example, if someone offers to sell a car for a certain amount during a telephone call, the offer will cease to be binding once the telephone call is ended. On the other hand, if the offer was made in other circumstances (e. g. sent by letter), it ceases to be binding with the lapse of time during which the offeror could receive a reply sent without undue delay in the normal course of business (Art. 66 § 2 of the CC). of course, it will be very difficult to establish this moment. An offer made electronically

[14] See, representatively: *Radwański Z., Olejniczak A.* Zobowiązania — część ogólna. Warszawa: C. H. Beck, 2018. P. 131 et seq. — See, for the most comprehensive presentation: *Machnikowski P.* Swoboda umów według art. 353^1 KC — konstrukcja prawna. Warszawa: C. H. Beck, 2005.

[15] See, representatively: *Radwański Z., Machnikowski P.* Zawarcie umowy. P. 425 et seq.

binds the offeror only insofar the other party immediately confirms its receipt (Art. 66^1 of the CC).

Apart from the moment when the offeror ceases to be bound by the offer made by him, the time and place of concluding the contract must be determined. The time of concluding the contract can be specified in the offer itself (e. g. the offer may stipulate that the binding time will end on 1 January, and if someone accepts the offer, the contract will not be concluded until 1 February). If the parties fail to do so, in case of doubt it is assumed that a contract is considered to be executed at the time the offeror receives a declaration of acceptance, and if such a declaration was not explicitly required — at the time the addressee starts to perform the contract (Art. 70 § 1 of the CC). However, if the place of executing the contract is not specified in the offer (important, *inter alia,* for determining the jurisdiction of the court examining a possible dispute under the contract), in case of doubt, a contract is deemed concluded in the place where the offeror receives a declaration of acceptance.

Auction and tender are the next procedures for concluding a contract regulated by the Polish Civil Code[16]. Although these are two different methods of concluding a contract, the Act, due to their similarities, contains solutions for both the auction and the tender. Generally speaking, an auction consists of making subsequent bids by persons in the same place and time who "see" the behaviour of other auction participants and can react to it (e. g. by placing a higher bid if the previous one was "outbid" by someone). Making a higher bid causes the bid made earlier to cease to be binding (unless otherwise stipulated in the auction conditions, Art. 70 [2] § 1 of the CC). The conclusion of the contract takes place at the moment of the award, i. e. the auction organizer finds that a given offer is the most advantageous (that there are no more favourable offers). Obviously, auctions are organized in cases where participants compete in one field, especially in the (highest) price that they would be willing to pay for the good that is the subject of the auction.

In the tender, however, bids are made by entities that "do not see each other" and thus cannot react to the behaviour of competitors interested in obtaining the same goods. The tender concerns, by definition, complex contracts where participants compete with each other on different levels (not only the price, but e. g. the deadline for the performance of the contract, the warranty period, etc.). An offer made in the course of the tender ceases to be binding if another offer has been selected, or if the tender has been closed without selection of any offer; the terms of the tender may stipulate otherwise (Art. 70 [2] § 1 of the CC). The contract, however, is in principle concluded at the time of submitting to the tender participant whose offer has been accepted a declaration of acceptance (Art. 70 [2] § 3 sentence 1 of the CC).

Despite the indicated differences, the regulations apply to both the auction and the tender. Both procedures for the conclusion of contracts require the announcement of the terms and conditions of the auction or tender, in which the organiser of the auction or tender specifies such elements as the time, place, subject and conditions of the auction or tender; alternatively, the manner of making these terms and conditions available is indicated (Art. 70^1 § 2 of the CC). The terms and conditions specified in the announcement of the auction or tender may be changed or revoked only if such eventuality has been stipulated in their wording (Art. 70^1 § 3 of CC). From the moment the terms and conditions are made available, the organizer of the auction or tender should act in accordance with their content; similarly, the participants from the moment of placing their bids (Art. 701 § 4 of the Civil Code). Both in the conditions of the auction and the tender, the obligation to lodge a bid bond may be stipulated. The bid bond is a specified sum of money paid to the organizer (or appropriate security established for the benefit of the organizer) under the pain of not admitting to the action (tender). his sum is returned to those participants

[16] See, representatively: Ibid. P. 465 et seq.

of the auction (tender) whose bids have not been selected, whereas in the case of the bid bond paid by the participant who "won" the auction (tender), the bond will be credited towards the price, if so agreed in the terms of the auction (tender). If, in turn, the participant, despite choosing his offer, refrained from concluding a contract, the validity of which depends on the fulfilment of specific requirements set out in the Act — especially regarding the form (otherwise the contract is concluded at the moment of selecting the offer and the participant, logically, may not evade its conclusion), the organizer may keep the collected sum (seek satisfaction from the security subject). If it is the organizer of the auction or tender that refrains from concluding the contract, the participant may demand an amount twice as high as the amount paid as a bid bond (Art. 70 [4] of the CC). Finally, according to a solution common for both the auction and the tender, if special requirements provided for in the law must be observed for the validity of a specific contract (this is primarily the requirement to maintain a special form), each of the parties (the participant whose bid was selected and the organiser of the auction or tender) may seek the execution of the contract in court (Art. 70^2 § 3 of the CC). This is a provision that deserves strong criticism, as it allows for circumventing formal requirements (primarily provided for contracts transferring the ownership of real estate) by organizing auctions or tenders.

Negotiation is the last, and at the same time, from perspective of the development of civil law, probably the original manner of concluding contracts[17]. The legislator does not define the term. It is widely recognised in science that a negotiation is a process of clashing positions of the parties with a view to concluding a contract; a process in which each party departs from its original, maximalist expectations to make a deal possible. It should be emphasized that the negotiated contract will be executed when the parties reach an agreement (consensus) on all elements or issues that were the subject of negotiations (Art. 72 § 1 of the CC). Therefore, it is not suffice to agree only on the key provisions. Obviously, on the basis of the fundamental to civil law principle of autonomy of will, the parties may deem a contract executed earlier — when they have not yet reached agreement on all negotiated issues. Then the parties to the contract will be able to fill the "gap" in the course of further negotiations; possibly, the relevant provisions of the Act will apply (in accordance with the previously discussed Art. 56 of the CC). Despite the fact that the mere undertaking of negotiations does not create an obligation to conclude a contract (the parties may not reach an agreement), the law sanctions reprehensible behaviour. This is because the one who started or conducted negotiations in bad faith, in particular without the intention to conclude a contract (e. g. to "pull" the other party away from negotiations with his competitor on a given market), is obliged to remedy any damage which the other party suffers because it was counting on the contract being executed (Art. 72 § 2 of the CC). This is an example of responsibility within the negative contract interest (German: *negatives Vertragsteresse*). The parties may also stipulate the obligation of confidentiality; special legal effects are regulated by Art. 72^1 of the CC.

5. Condition and time limit

Each sufficiently developed civil law of a state organism knows an additional contractual stipulation, i. e. clauses of specific content that may be added to contracts (or more broadly, legal transactions). One of such "eternal" clauses, probably known to every legal system, is a condition[18]. It is understood as a clause (an element of a legal transaction) which makes the arising or cessation of the effects of this act in law dependent on a future

[17] See, representatively: *Radwański Z., Machnikowski P.* Zawarcie umowy. P. 453 et seq.

[18] As for the condition, see, representatively: *Radwański Z., Trzaskowski* R. Treść czynności prawnej // System Prawa Prywatnego. Prawo cywilne — część ogólna. Vol. 2. P. 341 et seq.

and uncertain event; sometimes (and not very correctly), however, a condition is understood as a future and uncertain event on which the creation or termination of the effects of the legal transaction is dependent. As a rule, a condition may be added to any legal transaction, except where it is excluded by the law (e. g. the ownership of real estate cannot be conditionally transferred, Art. 157 § 1 of the CC) or the nature of the transaction (e. g. a condition is contested by the nature of marriage). The tradition of civil law knows a whole series of divisions or typologies of conditions. The normative meaning is divided into suspensive conditions (making the emergence of the effects of a legal transaction dependent on a future and uncertain event) and resolutory conditions (making the cessation of the effects of a legal transaction dependent on a future and uncertain event). The significance of this distinction is manifested primarily in Art. 94 of the CC. An impossible condition or a condition which is contrary to the law or to the principles of social coexistence, makes a legal transaction invalid if it is a suspensive condition; it is deemed not having been made (at all) if it is a resolutory condition. Polish case-law rather favourably refers to "potestative conditions" (those whose fulfilment or non-fulfilment depends more or less on the will of one of the parties)[19]. Finally, it is necessary to mention a very specific, subtle sanction linked to, generally speaking, disloyal actions by the parties between the time the contract is concluded and the time when the condition is fulfilled (or not fulfilled). For if a party who is interested in the non-fulfilment of a condition impedes the fulfilment of the condition in a manner which is contrary to the principles of social coexistence, the consequences will be such as if the condition had been fulfilled. In turn, if the party interested in the fulfilment of the condition leads to the fulfilment of the condition in a manner inconsistent with the principles of social coexistence, the consequences will be such as if the condition had not been fulfilled (Art. 93 of the CC).

The provisions on the condition apply accordingly to the time limit, i. e. the clause which makes the emergence or cessation of the effects of a legal action dependent on a future and certain event (Art. 116 of the CC). "A time limit", however, also has a different meaning, as it can simply mean a specific date or a period of time. The Act contains provisions specifying precisely how to calculate time limits (periods), e. g. it provides that a time limit expressed in days finishes with the expiry of the last day, and if the beginning of a time limit expressed in days is marked by a certain event, the day on which that event occurred is not included in the calculation of the time limit (Art. 111 et seq. of the CC).

6. Limitations of claims

The Polish legal system makes a clear distinction between limitations (statute of limitation) and a preclusive time limit. Only civil-law property claims are subject to the statute of limitations, whereas preclusive time limits apply to the right to terminate or modify the existing legal relationship by a unilateral act in law. In principle, the expiry of the limitations period does not cause the claim to expire (with the exception of claims by the entrepreneur against the consumer, Art. 117 § 2^1 of the CC), but the right to assert the statute of limitations arises on the part of the debtor[20]. If the debtor exercises the right to use the statute of limitation before the court, the court will dismiss the creditor's claim as being time-barred. A debtor may waive the right to use the statute of limitations only if the limitations period has already expired (in other words, the statute of limitations cannot be

[19] See the decision of the Supreme Court (7) of 22.03.2013. III CZP 85/12. Available at: https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/iii-czp-85-12-pojecie-warunku-potestatywnego-w-prawie-521453965 (accessed: 01.12.2021).

[20] As regards the issue of statute of limitations, see, representatively: *Kordasiewicz B.* Problematyka dawności // System Prawa Prywatnego. Prawo cywilne — część ogólna. Vol. 2. P. 715 et seq.

waived in advance, Art. 117 § 2 of the CC). Similarly, the parties may not extend or shorten the statutory limitations periods (Art. 119 of the CC). The crucial thing is to determine the beginning of the limitation period and its length. A limitations period starts running on the day on which a claim becomes due and payable. If, on the other hand, the due date of a claim depends on a specific action taken by the entitled person, the period starts running on the day on which the claim would have become due and payable if the entitled person had taken the action as soon as possible (Art. 120 of the CC). As regards the length of the limitations period, it is generally 6 years, except for claims for periodic benefits (e. g. rent) and claims by the entrepreneur related to his business activity (Art. 118 of the CC) which in this case is 3 years. Quite a number of special provisions modifying these rules (e. g. Art. 554 of the CC, under which claims by a seller who is an entrepreneur for payment of the price become time-barred after the lapse of years 2) are spread across the entire Civil Code. The Code also specifies the circumstances causing suspension of the limitations period (Art. 121 of the CC), after the cessation of which the once commenced limitations period continues, and the circumstances causing interruption of the limitations period (e. g. bringing an action before a court), after the occurrence of which the limitations period starts to run anew (Art. 123 of the CC).

Conclusions

The framework of the paper in relation to the scope of the issues raised allowed the nature of the Polish legal culture and selected institutions of the General part of the Civil Code to be presented only in a brief and sketchy manner. It is difficult to draw any firm conclusions on this basis. Undoubtedly, it can be said that the Polish Civil Code is a creative compilation of several classical systems of European law. However, the original legislative coherence of the Code is being undermined by successive amendments. These amendments, however, cannot be assessed only critically, as they satisfy the changing social and economic conditions, above all, the growing role of electronic communication and the increasing professionalisation of economic turnover.

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Избранные институты Общей части польского Гражданского кодекса

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В статье излагаются основные черты польской правовой культуры с точки зрения философии права и теории права. Польскую правовую культуру довольно часто называют умеренно позитивистской. Обязательность норм естественного права обычно не признается, в частности не признается превосходство норм естественного права над нормами позитивного права, однако законодатель в правовых актах требует учитывать моральные соображения в процессе принятия, толкования и применения закона. Подчеркивается, что польская правовая культура создала продвинутые инструменты, позволяющие практически алгоритмически интерпретировать нормативные акты. Однако практика довольно существенно отличается от теории. В общих чертах описываются отдельные институты Общей части Гражданского кодекса Польши: субъективное право (с особым упором на злоупотребление субъективным правом), гражданско-правовая защита личных прав, юридические действия (с особым акцентом на способность совершать юридические действия, изъявлять свою волю, на толкование волеизъявлений и недостатки волеизъявления), способы заключения договоров, условия, сроки и исковая давность. Гражданский кодекс Польши можно охарактеризовать как творческий, оригинальный сборник положений, взятых из Кодекса Наполеона, Гражданского кодекса Германии и Гражданского кодекса Австрии. Институт злоупотребления субъективными правами напоминает, по крайней мере с точки зрения терминологии, используемой в Кодексе, нормы советского законодательства; другие институты, если не учитывать их особенностей, входят в стандарт европейского права. Также в статье представлено важнейшее постановление Верховного суда Польши, определяющее практику применения некоторых положений, составляющих вышеупомянутые институты.

Ключевые слова: Гражданский кодекс Польши, субъективное право, злоупотребление субъективным правом, гражданско-правовая защита личных прав, юридические действия, способы заключения договоров, условия, сроки, исковая давность.

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