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Between Tradition and Modernity: Professor Jan Gwiazdomorski's Concepts of the Law of Persons in the Drafting of the Civil Code*

Między tradycją a nowoczesnością. Koncepcje prawa osobowego Profesora Jana Gwiazdomorskiego w pracach nad kodeksem cywilnym

ABSTRACT

The article expounds the views of Professor Jan Gwiazdomorski (1899–1977) on the development of the law of persons in the course of the drafting of the Civil Code during the 1950s and 1960s. The author looks at the Professor's contribution to the work of the Substantive Civil Law Team of the Codification Commission, with a particular focus on his analysis of capacity to perform legal acts and the institution of legal incapacitation. The paper sets out, i.a., the Professor's proposal to reduce the age at which limited capacity to perform legal acts is acquired from 13 to 10 years, his position regarding the implications of

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the annulment of marriage for the attainment of majority, and his demands for the extension of protection to persons afflicted with mental illness or mental disability. Attention is likewise drawn to the significance of these proposals in the broader context of Poland's pre-war legislative traditions and the post-war socio-economic exigencies. The analysis, conducted through the application of historical-legal and dogmatic methods, brings to light the characteristic feature of Professor Gwiazdomorski's scholarship, namely the integration of dogmatic systematics with the imperative of safeguarding the individual and ensuring the security of legal transactions. Although many of his proposals were not incorporated into the Civil Code adopted in 1964, they nonetheless constitute an important record of the then codification debate, and certain issues – such as the age for the acquisition of limited capacity – continue to resonate in present-day deliberations on the reform of the law of persons.

Keywords: codification of civil law; law of persons; capacity to perform legal acts; legal incapacitation

INTRODUCTION

Professor Jan Gwiazdomorski (1899–1977) ranks among the most distinguished Polish civilists of the 20th century. His scholarly legacy comprises both in-depth theoretical elaborations and a significant role in the codification of Polish civil law. In the aftermath of World War II, Poland was confronted with the imperative of enacting a unified Civil Code, which was to integrate the distinct legal traditions inherited from the former partitioning powers (its vestige being the differentiated regional private law of the Second Republic) while, at the same time, addressing the requirements of society within the new politico-economic milieu.

The legislative initiatives pursued in the Second Republic of Poland with a view to unifying the legal system across the entire territory of the reborn state failed to produce the anticipated effect in full. Nevertheless, the work of the Codification Commission, instituted by the Act of 3 June 1919 on the Codification Commission,[1] was intended to prepare drafts of uniform legislation for all the restored territories, including in the domain of civil law. The programme adopted by the Codification Commission of the Second Republic of Poland envisaged the gradual unification of discrete domains of civil law, with the intention of later combining them into larger, systematically organised bodies of law, preparatory to a comprehensive codification.[2] Partial unification in civil law extended to the Code of Obligations of 1933 and the Commercial Code of 1934; yet in the majority of civil law domains, and most notably in the law of persons, the regionally distinct laws remained operative. The outbreak of World War II interrupted the legislative work of the Codification Commission. It was resumed only in 1945 at the Ministry of Justice. Between 1945 and 1946, sixteen unification decrees were proposed (mainly inspired by the legacy

[1] Journal of Laws of the Polish State 1919, no. 44, item 315.

[2] Z. Radwański, *Kodyfikacja prawa cywilnego*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2009, no. 2, p. 131.

of the pre-war Codification Commission), embracing the general part of civil law, family law, property law, and succession law.[3] Subsequently, work commenced on the elaboration of a comprehensive codification of civil law.[4] The first draft was on the table in 1948, but it was not referred for further legislative process.[5] In 1950, a partial codification of private law was effected through the enactment of two parliamentary acts: the General Provisions of Civil Law[6] and the Family Code.[7] Further codification efforts led to successive drafts of the Civil Code in 1954 and 1955. However, in view of the criticism voiced by the legal community, the work on both drafts was discontinued.[8]

The situation evolved following the political unrest of October 1956 in Poland, in the wake of which the concept was revived of establishing a Codification Commission[9] tasked with preparing draft versions of, but not only, the Civil Code and the Civil Procedure Code.[10] Within the framework of the Codification Commission,[11] a civil law section was formed, comprising three distinct teams[12] focusing on the Civil Code, the Civil Procedure Code, and private international law.

[3] See S. Szer, *Unifikacja i kodyfikacja prawa rodzinnego i cywilnego*, "Nowe Prawo" 1945, no. 7–8, p. 30.

[4] See P. Fiedorczyk, *O początkach prac nad kodyfikacją polskiego prawa cywilnego w 1947 r.*, "Miscellanea Historico-Iuridica" 2006, vol. 4, p. 109 ff.

[5] See idem, *Dokumenty archiwalne dotyczące organizacji prac nad unifikacją i kodyfikacją polskiego prawa cywilnego w latach 1945–1948*, "Miscellanea Historico-Iuridica" 2006, vol. 4, pp. 165–166.

[6] Act of 18 July 1950 – General Provisions of Civil Law (Journal of Laws 1950, no. 43, item 311).

[7] Act of 27 June 1950 – Family Code (Journal of Laws 1950, no. 34, item 308).

[8] See A. Wolter, *Wynik dyskusji publicznej nad projektem k.c.*, "Prawo i Życie" 1961, no. 22; Z. Radwański, *op. cit.*, p. 132.

[9] Ordinance no. 227 of the Prime Minister of 23 August 1956 on the establishment of the Codification Commission at the Minister of Justice (Polish Monitor 1956, no. 70, item 856).

[10] See Z. Wasilkowska, *Zadania Komisji Kodyfikacyjnej*, "Państwo i Prawo" 1957, no. 1, p. 3 ff.; A. Wolter, *Nowy projekt kodeksu cywilnego*, "Państwo i Prawo" 1962, no. 12, p. 1062 ff.

[11] The organisational framework of the Codification Commission was set out in Ordinance no. 63/56/GM of the Minister of Justice of 25 October 1956 concerning the organisation and activity of the Codification Commission at the Ministry of Justice. See Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, *Tezy Regulaminu Komisji Kodyfikacyjnej*, team no. 285, file ref. 545, fols. 1–3. See also W. Czachórski, *Przebieg prac nad kodyfikacją prawa cywilnego PRL*, "Studia Prawnicze" 1970, no. 26–27, pp. 5–22; M. Mazuryk, I. Sadowski, *Organizacja i funkcjonowanie Komisji Kodyfikacyjnych Prawa Cywilnego w latach 1919–1989*, "Roczniki Nauk Prawnych" 2013, vol. 1, pp. 14–15; A. Moszczyńska, *Organizacja i przebieg prac nad kodeksem cywilnym w latach 1919–1964*, "Kwartalnik Prawa Prywatnego" 2020, no. 3, pp. 453–510.

[12] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, *Tezy Regulaminu Komisji Kodyfikacyjnej*, team no. 285, file ref. 545, fols. 8–10.

The Substantive Civil Law Team adopted the 1955 draft of the Civil Code[13] as a starting point, next to the effective Family Code of 1950.[14] Successive work on other relevant domains was to be aligned with the systematic structure of the draft. The methodology for elaborating individual provisions involved the designation of a co-rapporteur charged with preparing draft legislative solutions for specific institutions of the Civil Code. The drafts were then subjected to discussion, during which Team members submitted remarks or amendments, with the final wording of the proposed provision being determined by means of an open majority vote.[15]

The chair of the civil law section was Jerzy Marowski, while the Substantive Civil Law Team comprised eminent Polish civilists, including Jan Gwiazdomorski, at that time a professor at the Faculty of Law of the Jagiellonian University.[16] The appointment of Professor Gwiazdomorski to so distinguished a body of experts appears obvious in view of his scholarly and teaching achievements (both pre-WW2 and after it), as well as professional legal practice. Professor Gwiazdomorski was an active Team member and voiced his positions on most of the drafted regulations.

This study aims to expound Professor Gwiazdomorski's approach to the redefined provisions on the law of persons in the draft Civil Code elaborated by the Codification Commission. On the premise that the law of persons underpins the general part of civil law, the Professor advanced a view that sought to reconcile dogmatic systematics with the urge of safeguarding the individual and ensuring the protection of other participants in civil-law transactions. The normative solutions proposed for the law of persons were premised upon a synthesis of the pre-war legislative tradition with the exigencies of post-war Poland. Although the normative proposals advanced by Professor Gwiazdomorski with respect to capacity and the institution of declaration of death found no reflection either in the draft Civil Code or in the Civil Code enacted on 23 April 1964,[17] there can be no doubt that his views continue to exert an inspiring influence on the contemporary challenges of private law. It is noteworthy that Polish legal scholarship has not yielded a separate study devoted to this issue to date.

The following inquiry employs both the historical-legal and the dogmatic method.

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[13] *Projekt Kodeksu cywilnego Polskiej Rzeczypospolitej Ludowej. Tekst ustalony w wyniku dyskusji ogólnokrajowej*, Warszawa 1955.

[14] Provisions of family law were originally intended to be embedded in the proposed new Civil Code.

[15] See T. Dolata, *Adam Chełmoński (1890–1959) i jego udział w pracach Zespołu Prawa Cywilnego Materialnego Komisji Kodyfikacyjnej PRL*, Wrocław 2023, pp. 36–37.

[16] The other members of the Substantive Civil Law Team are Jan Wasilkowski, Seweryn Szer, Jan Gwiazdomorski, Kazimierz Przybyłowski, Aleksander Wolter, Jan Topiński, Jerzy Mayzel, and Henryka Dawidowicz. Later, the following members were also invited: Adam Chełmoński, Witold Czachórski, Zbigniew Rzepka, and Adam Szpunar. Jan Winiarz serves as a Team secretary. More about the Team members, see A. Moszczyńska, *Geneza prawa spadkowego w polskim kodeksie cywilnym z 1964 roku*, Toruń 2019, pp. 281–282.

[17] Original text of the Act of 23 April 1964 – Civil Code (Journal of Laws 1964, no. 16, item 93).

CAPACITY TO PERFORM LEGAL ACTS

1. The scope of capacity to perform legal acts in relation to age

Among the first matters addressed at the session of the Substantive Civil Law Team on 31 January 1957[18] was the capacity to perform legal acts. In the draft provision of the Civil Code, designated as Article 8 (corresponding content-wise to the current wording of Article 8 of the Civil Code[19]), which concerned the attainment of majority and the consequent acquisition of full capacity, Professor Gwiazdomorski proposed an amendment stipulating that a person who had contracted marriage and thereby attained majority should not forfeit it in the event of annulment of the marriage, save where the ground for annulment was that the marriage had been contracted by a minor without the authorisation of the guardianship authority. In the Professor's view, there was no basis for allowing such a person to retain majority following the annulment of a marriage. The forfeiture of majority should not occur solely where the marriage had been entered into by a minor with the consent of the guardianship authority, and the annulment was predicated on other grounds. He justified this position by arguing that only in such circumstances was there a foundation for recognising that a person under the age of 18 attained a level of maturity warranting the retention of full capacity to perform legal acts. Przybyłowski endorsed this point. Szer and Wolter[20] advanced a contrary position, whereas Wasilkowski opined that, at most, consideration might be given to the introduction of a new matrimonial impediment, namely that a person could not contract marriage prior to attaining majority if his or her earlier marriage had been annulled for lack of the prescribed age. He further observed that, if the annulment judgment were to operate *ex tunc*, all legal acts performed by the spouse while the marriage subsisted would be void. This claim elicited a rejoinder from Professor Gwiazdomorski, who correctly emphasised that acts performed by such persons would not be null as they fall within the category of *negotia claudicantia* – acts that can be confirmed by a legal representative. The chair of the Team, Marowski, adopted the position that in every case of annulment of marriage on grounds of absence of the prescribed age, re-marriage should be precluded until the expiry of an appropriate period. The adjustment proposed by Professor Gwiazdomorski was submitted to a vote but failed to obtain a majority. Wolter's suggestion – that

[18] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, 90/57-65/3/1, *Protokoły z sesji*, vol. 1, file ref. 54/8, fols. 47–70.

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

[20] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, 90/57-65/3/1, *Protokoły z sesji*, vol. 1, file ref. 54/8, fol. 49.

majority should be forfeited as a result of the annulment of marriage based on the impediment of insufficient age – was intended to be addressed in the provisions of matrimonial law.

As the further stages of the drafting of the Civil Code demonstrated, the matter was not settled in the manner proposed by Professor Gwiazdomorski, whether in the Civil Code of 1964 or in the Family and Guardianship Code published that same year.[21] In the present-day legal framework, the annulment of a marriage on the ground of failure to attain the prescribed age – even where the marriage was entered into without a judicial permit – does not entail the forfeiture of majority and, consequently, the deprivation of full capacity to perform legal acts.[22]

Another matter addressed by the codification Team was the determination of the age limit of a natural person warranting the conferral of limited capacity to perform legal acts. Under the General Provisions of Civil Law of 1950 and the draft Civil Code of 1955, the scope of a natural person's capacity was circumscribed by the thresholds of 13 and 18 years. Individuals below the age of 13 were devoid of capacity to perform legal acts. Those between 13 years of age and the attainment of majority (as well as those partially incapacitated) enjoyed limited capacity. Now, full capacity to perform legal acts was acquired upon the attainment of majority.

With regard to the age of a natural person affecting the scope of capacity to perform legal acts, Professor Gwiazdomorski proposed lowering the threshold for acquiring limited capacity from 13 to 10 years. In his view, the current age of 13 appeared too high, particularly given that, in principle, full capacity to perform legal acts was acquired at the age of 18. Entirely unconvincing, in the eyes of the proponent of the amendment, was the analogy to Article 69 of the 1932 Criminal Code then in force.[23] That provision stipulated that minors under the age of 13 who committed a punishable act were not subject to penalty; likewise, minors between 13 and 17 years of age who committed such an act without discernment, that is, without having attained the intellectual and moral development necessary to appreciate the significance of the act and to direct their conduct, were also exempt from punishment. The position advocating the lowering of the age threshold in civil law to 10 years for the acquisition of limited capacity to perform legal acts was endorsed

[21] The first draft of the Civil Code, made public in 1960, also included provisions regarding family law, while the subsequent one, published in 1961, contained none of such regulations. The provisions of family law, in a basically unaltered form, were included in a separate codification – the Act of 25 February 1964 – Family and Guardianship Code (Journal of Laws 1964, no. 9, item 59). See Z. Radwański, *op. cit.*, p. 132.

[22] For a concise discussion, see E. Drozd, *Uzyskanie pełnoletności przez zawarcie małżeństwa*, "Nowe Prawo" 1969, no. 7–8, p. 1109 ff.

[23] Regulation of the President of the Republic of Poland of 11 July 932 – Criminal Code (Journal of Laws 1932, no. 60, item 571).

by Szer, Przybyłowski, Wasilkowski, and Wolter, while the question of harmonising civil and criminal law provisions was deferred to a subsequent stage of the work.

Professor Gwiazdomorski's proposed amendment to lower the minimum age for a natural person to acquire limited capacity was not further substantiated in the minutes of the Team's sessions. It may only be inferred that the proposal was, on the one hand, an expression of the perceived necessity to confer upon persons over the age of 10 limited capacity to perform legal acts, by reason of their having attained a degree of discernment as to the content and effects of their own acts (while preserving the requirement of cooperation of the legal representative in their performance). On the other hand, it may have been a reminiscence of the legislative solutions inherited from the formerly partitioned territories by the Second Republic of Poland. Professor Gwiazdomorski, a graduate of the Jagiellonian University and both a legal scholar and practitioner, had, already in the pre-war period, displayed his acquaintance not merely with the rules of the law of persons in the former Austrian partition but also with the legal regimes imposed by the other two partitioning powers.

In the former Austrian partition, in the pre-unification period, natural persons fell, with regard to age and the extent of their capacity to perform legal acts, withing two principal categories: minors and majors, the latter being of 21 years of age and above.[24] In relation to minors, a tripartite classification was employed: the age of childhood, terminating at the completion of the 7 year of age (in which minors were devoid of capacity to perform legal acts); the age of immaturity, commencing at 8 and concluding at 14 (in which minors possessed limited capacity); and finally, the category of mature minors, extending from the age of 14 up to the attainment of majority. Mature minors also possessed limited capacity to perform legal acts; however, in contrast to immature minors, the limitations imposed upon them were less restrictive. For instance, a mature minor could independently dispose of items placed at his or her free disposal, draw up a valid will or codicil, and, after reaching the age of 18, freely dispose of the net income derived from his or her estate. Moreover, a mature minor incurred liability with his or her entire estate for damage arising from unlawful acts.[25] This differentiation of the scope of capacity by age, under pre-unification law, seems to have been justified primarily on psychological grounds and by reference to the developmental formation of the minor's personality.

[24] Pursuant to Article 1 of the Act of 21 October 1919 on the age of majority in the former Austrian partition (Journal of Laws 1919, no. 87, item 472), majority was attained at the age of twenty-one. However, a minor could be regarded as an adult after reaching the age of eighteen.

[25] See F. Zoll, *Prawo cywilne opracowane głównie na podstawie przepisów obowiązujących w Małopolsce*, vol. 1: *Część ogólna*, in cooperation with J. Gwiazdomorski, L. Oberlender, T. Sołtysik, Poznań 1931, pp. 149–152.

An indirect manifestation of this concept was embodied in the Decree of 29 August 1945 – Law of Persons,[26] wherein the legislator set the lower threshold of age for the acquisition of limited capacity to perform legal acts at 7 years, while majority, and thereby full capacity to perform legal acts, was prescribed at 18 (Article 3). However, in the General Provisions of Civil Law of 1950, the lower threshold of age for the acquisition of limited capacity to perform legal acts was established at 13 years of age (Articles 49 and 50). These very provisions constituted the foundation for the Team's deliberations on the drafted codification of civil law. Although the amendment of Professor Gwiazdomorski, advocating the reduction of the age threshold for a natural person to acquire limited capacity to perform legal acts from 13 to 10 years, won the assent of the other members of the Substantive Civil Law Team, it was not ultimately incorporated into the Civil Code enacted in 1964. Since then, throughout more than six consecutive decades, no legislative reform has been undertaken in this respect. Still, given contemporary social relations and the accelerated emotional and mental development of adolescents, it should be considered, in the course of legislative deliberations, whether the age threshold of 13 should be reduced to 10, thereby enabling a natural person to acquire limited capacity upon attaining that age.

2. Deprivation and restriction of capacity to perform legal acts

A weighty discussion arose among the members of the Substantive Civil Law Team of the Codification Commission concerning the draft provisions of the Civil Code on incapacitation. Article 10 of the General Provisions of Civil Law of 1950 specified only the grounds for partial incapacitation of a person of age, namely: mental illness or intellectual deficiency – provided that the individual's condition did not necessitate complete incapacitation – prodigality, and habitual drunkenness, and drug addiction. According to Professor Gwiazdomorski, such a delineation of the grounds for partial incapacitation was insufficient, as it set forth solely the negative attributes – such as mental illness or intellectual deficiency – of the person subject to incapacitation, whereas it should also have included the positive attribute, namely that the individual did not require total incapacitation but stood in need of assistance in managing his or her affairs.

The proposed amendment met with the approval of the other members of the Team, and although Marowski considered it to be no more than an interpretative aid in construing the provisions on incapacitation, it was nevertheless incorporated into the currently binding Article 16 of the Civil Code, which sets out the criteria of partial incapacitation. Undoubtedly, the wording proposed by the Professor – "the need for assistance in managing one's affairs" – for a person to be placed under partial

[26] Journal of Laws 1945, no. 40, item 223.

incapacitation (besides the age criterion) clearly constitutes a significant criterion for evaluating the condition of the individual subject to partial incapacitation, in contrast to the state of inability to direct one's conduct that underlies full incapacitation.

Another significant discussion among the members of the Team was sparked by the proposal advanced by Professor Gwiazdomorski to revise the provision that determined the categories of natural persons with limited capacity to perform legal acts or deprived of such capacity entirely. Pursuant to Article 50 of the General Provisions of Civil Law of 1950 and the draft Civil Code, limited capacity to perform legal acts pertained to minors at the age of 13 and above and persons subject to partial incapacitation. Professor Gwiazdomorski put forward an amendment whereby, in the new Civil Code, the provision on persons devoid of capacity to perform legal acts should be formulated as follows: "Persons under the age of 10, persons subject to full incapacitation, and persons who, on account of mental illness or intellectual deficiency, are in fact capable of managing their affairs yet stand in need of assistance in doing so, shall be deemed to lack capacity to perform legal acts".[27] In support of his position, he argued that not every individual afflicted with mental illness or intellectual deficiency is subjected to incapacitation. According to the Professor, it was beyond doubt that a person so afflicted required a higher degree of protection than an individual placed under partial or total incapacitation. Meantime, civil law afforded protection to such individuals in but a single manner, by treating their declarations of intent as null. According to Professor Gwiazdomorski, it would have been justified to classify such persons as either devoid of, or restricted in, their capacity, thereby contributing to a broader scope of protection.[28] Recognising persons afflicted with mental illness or intellectual deficiency, though not subjected to incapacitation, as individuals either restricted in, or devoid of,

[27] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, 90/57-65/3/1, *Protokoły z sesji*, vol. 1, file ref. 54/8, fols. 51–52.

[28] The amendment proposed by Professor Gwiazdomorski was predicated upon the then prevailing doctrinal view in Polish scholarship concerning the so-called natural incapacity to perform legal acts. This view held that the mental condition of a natural person, which excludes their actions with discernment, simultaneously excludes his or her capacity to perform legal acts and cannot theoretically be regarded as a defect of a declaration of intent. It was nevertheless stressed that reliance upon defects of a declaration of intent in such circumstances engendered considerable evidentiary challenges. See, in particular, A. Ohanowicz, *Wady oświadczenia woli w projekcie kodeksu cywilnego*, "Przegląd Notarialny" 1949, no. 1–2, p. 34 ff.; J. Gwiazdomorski, *Zawarcie małżeństwa*, "Państwo i Prawo" 1949, no. 4, p. 45 ff.; idem, *Prawo spadkowe*, Warszawa 1963, p. 195, where he explicitly indicated that mental states precluding conscious and voluntary decision-making or the expression of intent – most notably mental illness and intellectual deficiency – should be recognised as grounds producing the absence or restriction of capacity to perform legal acts, rather than being regulated by the provisions on defects of declarations of intent. See also S. Grzybowski (ed.), *System Prawa Cywilnego*, vol. 1: *Część ogólna*, Warszawa 1974, p. 337 and literature cited therein; M. Pazdan, *Osoby fizyczne*, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Warszawa 2012, pp. 42–46.

capacity to perform legal acts was intended also to protect the interests of other actors in legal relations. Professor Gwiazdomorski pointed, by way of illustration, particularly to questions of family law: the forfeiture of parental authority by a parent who becomes mentally ill; the absence of a requirement to obtain the consent of a mentally ill mother of an extramarital child for the child's acknowledgment; and the absence of any need to obtain the consent of a spouse, if mentally ill yet not incapacitated, where the other spouse seeks to adopt their child.

In reply to the amendment, Szer observed that the considerable diversity of pathological conditions subsumed under the notion of mental illness, and capable of influencing capacity to perform legal acts, should invariably result in either partial or total incapacitation, the determination of which lies with the court relying upon expert testimony, should it conclude that the condition of the individual justifies affording him or her "legal assistance". The mere presence of mental illness or of a mental condition impairing or excluding the exercise of discernment did not in itself constitute a sufficient basis for intruding upon the personal sphere of the individual by automatically depriving him or her, in whole or in part, of capacity to perform legal acts. In the Professor's view, his amendment did not establish any novel grounds for the deprivation or restriction of capacity; rather, it expressly affirmed that an individual qualifying for incapacitation was either devoid of such capacity or possessed it in a restricted measure.

It appears that the amendment advanced by Professor Gwiazdomorski encroached excessively upon the personal sphere of the individual and created evidentiary difficulties. According to Wasilkowski, the legislative solution thus proposed, instead of yielding the anticipated enhancement of protection for persons afflicted with mental impairments, might entail for them a variety of detrimental consequences. Thus, in the case of mild or innocuous psychological disturbances, an individual otherwise functioning normally within society would *ex lege* be deemed to lack, or to possess only restricted, capacity to perform legal acts. In the opinion of Przybyłowski, the most vulnerable point of Professor Gwiazdomorski's concept resided in the uncertainty of the legal status of such individuals, which he aptly described as "a man having to go through life already branded with a stamp". Protective measures for such persons, he observed, might be ensured in other ways; for instance, should the objective be to protect such an individual against the consequences of expiry of a limitation period, it would suffice to supplement appropriately the relevant provisions on limitation (cf. today's Article 122 of the Civil Code). In Wolter's view, the condition of limited capacity to perform legal acts, or of the absence thereof, was of a permanent character and should be expressly attested by a judicial decision, whilst any form of automatism in this domain was entirely inadmissible. As a result, Professor Gwiazdomorski's amendment did not receive the endorsement of the remaining members of the Team, and the effective Civil Code of 1964 makes no provision for the absence or restriction of capacity to perform legal acts in respect of persons afflicted with mental illness

or intellectual deficiency, the principal – albeit not the sole – protective measure available to them being the institution of incapacitation.

It is hard to dissent from the stance adopted by Professor Gwiazdomorski's adversaries in the substantive Civil Law Team with respect to his proposal. The deprivation or restriction of a natural person's capacity to perform legal acts solely by reason of mental illness or psychological disturbance would constitute, in effect, a form of "stigmatisation" of such individuals and would fail to advance their protection in broader terms.

CONCLUSIONS

The analysis of Professor Jan Gwiazdomorski's doctrinal positions reveals a jurist singularly attuned to the necessity of maintaining equilibrium between the dogmatic systematics of law and the imperative of protection of the individual and security of legal transactions. His proposals – although not invariably incorporated into the definitive form of the 1964 Civil Code – testify to a profound reflection on the nature of capacity to perform legal acts and to an effort to adapt the legislative traditions of the Second Republic of Poland to the socio-legal framework of post-war Poland. On numerous occasions, his interventions epitomised an attitude at once bold and responsible, taking account both of the individual perspective and of the broader social interest.

From the perspective of more than six decades of the 1964 Civil Code in operation, it seems opportune to revisit Professor Gwiazdomorski's proposals, notably his suggestion of lowering the threshold age for the acquisition of limited capacity to perform legal acts, especially in view of contemporary social transformations and the rapid maturation of the younger generation. His concepts may provide a stimulus for continued reflection on the normative architecture of the law of persons, and, above all, they underscore that the vocation of law is not confined to the elaboration of systemic legislative frameworks but extends to the effective safeguarding of human dignity and individual autonomy.

The concept of natural incapacity or restriction of capacity to perform legal acts, contingent upon the presence of mental illness or intellectual disability, is no longer tenable today. Contemporary legislative trends relating to the rights of persons with disabilities, including those with mental impairments, have taken a markedly different course, as laid down in the United Nations Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006.[29] The States Parties to the Convention undertook to adopt measures designed to guarantee that persons with disabilities are afforded access to the support they may require in the exercise

[29] Journal of Laws 2012, item 1169.

of their capacity to perform legal acts. Such measures, relating to the exercise of that capacity, must above all respect the rights, intent, and preferences of the individual; they must also be proportionate and tailored to the person's circumstances and applied for the shortest possible duration. Accordingly, the institution of legal incapacitation operative in Polish law,[30] which automatically deprives the individual of decisional autonomy, should be supplanted by a supported decision-making model. A tangible expression of this tendency within the Polish legal system is the governmental draft Act on Instruments of Supported Decision-Making.[31] It envisages the removal of the institution of legal incapacitation and its substitution by the institution of a representative guardian for a major in need of support insofar as he or she is incapable of perceiving or appraising reality or of independently directing his or her conduct, along with the institution of a supporting guardian for majors whose protection does not necessitate the appointment of a representative guardian, yet who in fact requires assistance in the management of his or her affairs.

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ABSTRAKT

W artykule przedstawiono poglądy Profesora Jana Gwiazdomorskiego (1899–1977) na kształt prawa osobowego w toku prac nad projektem kodeksu cywilnego w latach 50. i 60. XX w. Autorka analizuje udział Profesora w Zespole Prawa Cywilnego Materialnego Komisji Kodyfikacyjnej, ze szczególnym uwzględnieniem jego stanowiska dotyczącego zdolności do czynności prawnych oraz instytucji ubezwłasnowolnienia. W opracowaniu zaprezentowano m.in. propozycję Profesora dotyczącą obniżenia granicy wieku uzyskania ograniczonej zdolności do czynności prawnych z 13 do 10 lat, jego pogląd w zakresie skutków unieważnienia małżeństwa dla pełnoletności, a także postulaty poszerzenia ochrony osób chorych psychicznie i niedorozwiniętych umysłowo. Wskazano również na znaczenie tych propozycji w kontekście przedwojennych tradycji legislacyjnych oraz powojennych potrzeb społecznych i gospodarczych Polski. Przeprowadzona analiza, oparta na metodach historyczno-prawnej oraz dogmatycznej, pozwoliła uchwycić charakterystyczny rys myśli Profesora Gwiazdomorskiego, łączącej dogmatyczną systematykę z potrzebą ochrony jednostki i zapewnienia bezpieczeństwa obrotu. Choć wiele jego propozycji nie znalazło odzwierciedlenia w uchwalonym w 1964 r. Kodeksie cywilnym, pozostają one istotnym świadectwem ówczesnej debaty kodyfikacyjnej, a niektóre z nich – jak problematyka wieku przyznania ograniczonej zdolności do czynności prawnych – zachowują aktualność także we współczesnych dyskusjach nad reformą prawa osobowego.

Słowa kluczowe: kodyfikacja prawa cywilnego; prawo osobowe; zdolność do czynności prawnych; ubezwłasnowolnienie