

DEFECTS OF A DECLARATION OF WILL ON THE GROUNDS
OF THE CODE OF OBLIGATIONS OF 1933

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1. INITIAL REMARKS

A declaration of will is a basic element of legal activity, which is submitted for the purpose of inducing specified legal effects. Legal system, however, indicates certain actual situations, which can imply the result in the form of defectiveness of legal actions made with violation of specific legal norms. An example of such regulations are defects of a declaration of will, in the case of occurrence of which performed legal act is regarded absolutely invalid or may be cancelled or invalidated as a consequence of revocation by one party from legal effects of this legal activity.

Regulations devoted to defects of a declaration of will were already in the Regulation of the President of the Republic of Poland of 27 October 1933 Code of Obligations¹: They were included in the 2nd title, section I, Chapter 2 CL, entitled “Defects of a Declaration of Will”. Regulation of defects in declaration of will was also included in the act of 18 July 1950 General Regulations of the Civil Law² in Section V, title III of the General Regulations of the Civil Law. An analysis of previous legal acts, in particular CL, will allow to indicate to what extent contemporary regulation used prior legislative achievements.

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¹ Journal of Laws of 1933, No. 82, item 598 with later amendments, hereinafter referred to as CL.

² Journal of Laws of 1950, No. 34, item 311 with later amendments, hereinafter referred to as GRCL

It should be indicated that defects of a declaration of will apply only to legal actions, and thus shall not apply to other legal events such as court rulings or administrative decisions³. They relate to behaviour of an individual person, and the defect of statement of a natural person acting as a legal person authority is treated as the defect of this legal person⁴.

2. DEFECTS OF A DECLARATION OF WILL IN THE CODE OF OBLIGATIONS

Defects of a declaration of will are covered by regulation contained in Articles 31-45 CL. These provisions include situations in which, despite submission of a declaration of will, it will not cause all legal effects included in the content of this statement. Specific defects may also lead to absolute invalidity of legal activity namely a situation where there will be no legal effects for which a given legal activity was undertaken. Taking into account a comprehensive regulation of defects in declaration of will, according to L. Domański it should be indicated that important declaration of will can be submitted only by entities not deprived of the ability to legal activities and *a contrario*, that declaration of will of the entity should be conscious, serious, real and untroubled, namely free from error, deceit, unlawful threat and exploitation⁵.

2.1. STATE OF UNCONSCIOUSNESS OR TEMPORARY DISTURBANCE OF MENTAL ACTIVITIES

According to Article 31 CL “declaration of will is invalid, submitted by a person in condition of unconsciousness or even temporary disturbance of mental activities excluding conscious will”. It is indicated that by the term “condition of unconsciousness or even temporary disturbance of mental ac-

³ Z. Radwański, [in:] Z. Radwański (ed.), *System prawa prywatnego. Prawo cywilne – część ogólna*, vol. II, Warszawa 2008, p. 381.

⁴ *Ibid.*, p. 382.

⁵ L. Domański, *Instytucje kodeksu zobowiązań. Komentarz teoretyczno – prawny. Część ogólna*, Warszawa 1936, p. 226.

tivities excluding conscious will” what is meant is external condition, which is independent from internal motives⁶. The Supreme Court in the decision of 13.12.1946 indicated that “article 31 of the Code of Obligations applies to the case of lack of the actual capacity to manage one’s will by the party submitting a declaration of will”⁷. State of unconsciousness is a condition of a human, who does not realize the circumstances that happen around him or her, who does not realize his own acts, as well as other people, and it results from acceptance without any reflection everything that in the normal course of events requires conscious consideration and decisions of will⁸. The definition of temporary disturbance of mental activities excluding conscious will, includes such states where a person declaring the will has “normal recognition capacity but does not have normal capacity to manage their will”⁹. The condition of non-awareness can be concluded on the basis of behaviour of a given person and as examples of such behaviour one may indicate acute fit of madness depriving of the capacity to realize what is happening in general or also strong excitement excluding the possibility of conscious consideration and making thought-out decisions¹⁰. It is not important whether this condition is of permanent or temporary nature, it is important that it occurs at the time of submitting declaration¹¹. In literature on the subject, it is indicated that the circumstance of presence of non-awareness condition should be determined on the basis of testimonies of witnesses, smaller meaning attributed to opinions of experts¹². Examples

⁶ *Ibid.*, p. 228.

⁷ II C 399/46, The Supreme Court, OSN(C) 1948/1, item 6; the Supreme Court in justification raised that “declaration of will is invalid, even if the person submitting was deprived in the court of ability to legal activities or limited in it, because here the cause of invalidity is not lack of legal ability to act in general, but lack of the actual ability to manage one’s will, lack of conscious will”.

⁸ See: L. Domański, *Instytucje...*, p. 228.

⁹ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks zobowiązań. Komentarz*, Kraków 1936, p. 79.

¹⁰ L. Domański, *Instytucje...*, p. 228.

¹¹ R. Longchamps de Berier, *Polskie prawo cywilne. Zobowiązania*, Lwów 1939, p. 77, see also: J. Namitkiewicz, *Kodeks zobowiązań. Komentarz dla praktyki. Część ogólna art. 1-293*, vol. 1, Łódź 1949, p. 39.

¹² See: L. Domański, *Instytucje...*, p. 229.

of activities in condition of unconsciousness may be submission of the declaration in complete drunkenness or drugs stupor, and to temporary disturbances of mental activities may include activities during hypnosis¹³. Conscious will also may not be declared by an entity deprived of or limited in ability to legal activities under respective legal provisions or court ruling e.g. minor or incapacitated persons¹⁴. However, the issue was regulated by special provisions of personal law¹⁵. On the other hand, no basis for invalidity in the case when the mentally ill patient or a drug addict consciously concluded a contract aiming at satisfying internally felt need, but this need was hidden and they behaved completely normal, unless the other party knew about action of this person under internal compulsion caused by illness or addiction, and their compulsory location used for their own benefit. Then, however, the institution of exploitation may apply.

2.2. LACK OF INTENT TO CAUSE LEGAL EFFECTS¹⁶

Article 33 CL indicates that “declaration of will, disclosing, due to circumstances under which it was submitted, lack of intent to cause legal effects is invalid”. It should be indicated that the premise of lack of intent must be disclosed outside and result from circumstances in which declaration of will was submitted¹⁷. Article 33 CL includes such situations, in which both parties of a given legal action agree that a given declaration is legally irrelevant i.e. that no legal effects can arise from submitted declarations of will¹⁸. Lack of grounds for invalidity happen in the case of disclosure of intent to cause legal effects, although in reality there is no intent, as the so-called “thought objections” whose content cannot be decoded from the way of behaving or circumstances in which the inten-

¹³ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 79.

¹⁴ See : R. Longchamps de Berier, *Polskie prawo...*, s. 77.

¹⁵ See: Article 32 CL.

¹⁶ L. Domański called them not serious, declarations of will, see: L. Domański, *Instytucje...*, p. 245.

¹⁷ *Ibid.*, p. 245.

¹⁸ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 84.

tion to cause legal effects was presented, are not important when assessing validity¹⁹. Examples of declarations of will submitted without the intention to cause legal effects are declarations submitted for a joke, to show off or in connection with a scientific experiment²⁰.

2.3. OSTENSIBILITY

Ostensibility of a declaration of will is regulated in Articles 34-35 CL. L. Domański indicates that ostensible declaration has “usually external characteristics of serious declarations, submitted with alleged intention to cause legal effects, but aimed at concealing the real intent, inconsistent with disclosed intent”²¹. Ostensibility of a legal activity takes place only when agreement of both parties occur that a specific action of the parties will be a simulation of such an activity²². Simulated contracts are concluded, as a principle, for the purpose of misleading third party or in order to evade the act²³. Apart from simulated simple declarations of will, one indicates simulated combined declarations of will intended to conceal other legal activity²⁴. The doctrine distinguishes complete and absolute ostensibility when its source is total fabrication of circumstances which do not correspond at all to the reality, both in terms of form of and the content of the legal activity and partial ostensibility, which usually refers to the date of legal activity in such a way, so that in the document proving making an activity insert date inconsistent with reality. A special form of ostensibility is providing a person which takes place when in the place of a person truly signing the contract with prior approval of the parties involved, the contract

¹⁹ L. Domański, *Instytucje...*, p. 245; see also: I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, *op. cit.*, p. 84.

²⁰ See: L. Domański, *Instytucje...*, p. 245-246, see also: F. Zoll, *Zobowiązania w zarysie według polskiego Kodeksu zobowiązań*, Warszawa 1948, p. 32.

²¹ L. Domański, *Instytucje...*, p. 246-247.

²² I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 85.

²³ E. Till, *Polskie prawo zobowiązań (Część ogólna). Projekt wstępny z motywami*, Lwów 1923, p. 72.

²⁴ R. Longchamps de Berier, *Polskie prawo...*, p. 82.

is concluded by a different, apparent contractor²⁵. Ostensibility does not take place with declarations of will concerning rights of the marital status²⁶. The Party referring to the described defect may request determination of the actual legal activity and restoration of the condition corresponding to actual activity²⁷. Performance of legal activity under false pretences can lead to invalidity of this legal activity, also conversion of apparent legal activity into real activity is possible²⁸. However, in the event when legal activity conceals another activity, which is in conflict with public order, the act or good customs, then both legal actions are invalid²⁹. The parties of apparent activities are persons, who expressed their permission hereto³⁰. Article 35 § 1 CL regulates protection of third parties operating in good faith against the effects of apparent activities. By good faith is understood trust in reality of performed legal act³¹. In addition, Article 35 § 2 CL grants to the creditors and to third parties the right to refer to apparent activities, performed to their damage, which the right shall not expire³². As a result, they may refer to invalidity by law of apparent activities when it was made to their damage, and they are loaded only with the weight to demonstrate intent of their harm, without the need to prove damage³³.

The need for differentiation of apparent contract and trust act should be borne in mind, which is real and true act concluded by the parties with full awareness that its legal effects go beyond the intended purpose, for instance in the case of transfer of ownership on protection³⁴.

²⁵ *Ibid.*, p. 248.

²⁶ *Ibid.*, p. 251.

²⁷ *Ibid.*, p. 252.

²⁸ *Ibid.*, p. 252-253.

²⁹ *Ibid.*, p. 252.

³⁰ *Ibid.*, p. 258; see also: R. Longchamps de Berier, *Polskie prawo...*, p. 84.

³¹ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 88.

³² L. Domański, *Instytucje...*, p. 259.

³³ See justification of rulings of the Supreme Court of 17.02.1938 (II C 2016/37), OSN (C) 1939/1, item 17.

³⁴ J. Namitkiewicz, *Kodeks...*, p. 45-46.

2.4. ERROR

R. Longchamps de Berier defines error as an erroneous idea about a true state of affairs at the time of submitting the declaration of will, or as an erroneous idea about the submitted declaration of will's content, will own or the contractor's³⁵. Two kinds of errors are distinguished in literature: error in the strict sense occurring in the event when a given declaration is disclosed in accordance with the will of an entity submitting it, but exclusively in terms of its incorrect idea about the actual state of affairs and mistake, which occurs when one declaring discloses different content of a declaration than intended, e.g. because of signing a document other than covered by the intention, due to misunderstanding the language in which it is submitted, or because the declaration was deformed by messenger³⁶. In the first case adopting will is defective, in the case of error defective is the declaration itself³⁷.

An error with regard to reason should be distinguished from an error as to the content of a declaration. An error with regard to reason may only be an error in the strict sense, while an error as to the content of a declaration may be both an error in the strict sense and a mistake³⁸. Reason as defined by CL is facts and circumstances which occurred already in the past, or supposed to take place in the future that induce entities to submit declarations of will with specified content³⁹. An error with regard to reason may result from total being unfamiliar with the actual status of things, but may also arise in the event of having inaccurate information with regard to actual circumstances⁴⁰. In the case of this error there is no discrepancy between internal will and the content of the declaration of will, as due to safety considerations of turnover, reason should not affect validity of

³⁵ R. Longchamps de Berier, *Polskie prawo...*, p. 84

³⁶ *Ibid.*, p. 84-85.

³⁷ *Ibid.*, p. 85.

³⁸ *Ibid.*, p. 85.

³⁹ L. Domański, *Instytucje...*, p. 263.

⁴⁰ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 90.

legal activity⁴¹. An error in reason is reflected beyond the content of the declaration of will and legal activity, and consequently, it is only a defect in the will⁴². This leads to observation that the effects of error with regard to reason are borne exclusively by an entity remaining in error, even if the other party knew it or could easily note it⁴³.

According to I. Rosenblüth “error as to the content of one’s declaration consists in that the person who normally made decision, shows in declaration of their will otherwise than their intention or demonstrates their will (...) in accordance with made decision, but wrongly understands the importance of made declaration”⁴⁴. In the case when it refers to improper understanding of the content of a declaration of the other party may consists in e.g. submission of own declaration as a result of improperly decoded declaration of the contractor⁴⁵. Errors as to the content of declarations of will are: errors concerning circumstances covered by the statement e.g. object or subject of the contract as well as all kinds of mistakes in the declaration⁴⁶.

The parties aim to evade any legal effects submitted under the influence of an error may refer only to an error being externally in the content of a declaration of will, which was caused by behaviour of the other party or was at least known to them or easily default⁴⁷. Assessment of its importance should be made on the basis of both a subjective and objective criterion⁴⁸. The first criterion consists in making test aiming to answer a question whether between an error and the submission of a declaration there is causal

⁴¹ E. Till, *Prawo...*, p. 73; exceptions are e.g. the contract of donation or regulations of the last will.

⁴² F. Zoll, *Zobowiązania...*, p. 34.

⁴³ L. Domański, *Instytucje...*, p. 264.

⁴⁴ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 93.

⁴⁵ *Ibid.*, p. 94.

⁴⁶ R. Longchamps de Berier, *Polskie prawo...*, p. 86.

⁴⁷ L. Domański, *Instytucje...*, p. 265.

⁴⁸ On the grounds of district eastern land law there was used only the objective criterion, namely one examined circumstance whether a given legal activity was made by an average, reasonable man, see: F. Zoll, *Prawo cywilne dzielnic polskich w zarysie. Prawo cywilne ziem wschodnich*, part 4, F. Bossowski (ed.), Warszawa-Kraków 1922, p. 69; E. Till suggested a subjective criterion, see: E. Till, *Prawo...*, p. 74.

nexus, and thus in fact it applies to the issue or in the event when an error did not occur, whether a given person would submit or not a declaration of such content⁴⁹. The second one, on the other hand, requires reasonable assessment of things, i.e. recognition whether a declaration, in a particular actual case, would not be submitted by a reasonable entity⁵⁰. By significant error it could be understood an error as to the type of the contract as to the object of the contract and with regard to the person⁵¹. Effective evading the legal effects of a declaration of will leads to relative invalidity of performed legal activity. Despite the fact that the Polish law contains a principle, in accordance with which ignorance of law harms, in some situations it is allowed to evade the legal effects of error with regard to the law for instance in the case of being unfamiliar with foreign legal regulations⁵².

2.5. DECEIT

L. Domański indicates that deceit consists in any kind of slyness, cunningness and actions aiming at misleading someone or deceiving someone⁵³. With regard to deceit qualifications were equivalent of error with regard to reasons with error as to the content of a declaration, which is compliant with requirements of good customs and the principle of loyalty in trading⁵⁴. An error during deceitful behaviour of a party does not need to be significant objectively, however, it must be characterized by importance, in subjective meaning, which means that it must remain in cause connection with submitted statement⁵⁵. Deceitful behaviour may consist in

⁴⁹ See: R. Longchamps de Berier, *Polskie prawo...*, p. 87; see also: I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 96.

⁵⁰ R. Longchamps de Berier, *Polskie prawo...*, p. 87.

⁵¹ L. Domański, *Instytucje...*, p. 266.

⁵² See ruling of the Supreme Court of 24.06.1937 (C II 309/37), quot.: J. Namitkiewicz, *Kodeks...*, p. 51.

⁵³ L. Domański, *Instytucje...*, p. 272.

⁵⁴ See: E. Till, *Prawo...*, p. 76.

⁵⁵ R. Longchamps de Berier, *Polskie prawo...*, p. 90.

action, as well as nonfeasance, manifested in using someone else's error⁵⁶. Deceit takes place in the case of conscious pursuit to mislead the contractor and occurrence of causal relationship between this conscious action and occurrence of error⁵⁷. Therefore, negligence itself of the other party is not sufficient⁵⁸. A person being in error must only demonstrate that he submitted a declaration of will under the influence of an error and that the other party deceitfully caused it, on the other hand, the fact whether the mistake was significant or insignificant is of no importance⁵⁹. Sanction of deceit is a possibility to evade any legal effects of a declaration of will by the person being in error⁶⁰.

2.6. THREAT

Another defect of a declaration of will regulated in the act is threat also called mental compulsion. The right to evade any legal effects of legal activity shall be granted both in the event when threat comes from the other party and from the third party⁶¹. When it comes from the third party, without importance is the fact whether the contractor knew or should know about the existence of threat⁶². It could be called improper receipt of will in this case only when threat is unlawful⁶³. Qualification of a given activity as unlawful threat may be made regardless whether it was directed against the law, or towards a specified entity⁶⁴. It is indicated that a threat

⁵⁶ L. Domański, *Instytucje...*, p. 273, see also: I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 102.

⁵⁷ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 102.

⁵⁸ J. Namitkiewicz, *Kodeks...*, p. 53.

⁵⁹ L. Domański, *Instytucje...*, p. 272.

⁶⁰ R. Longchamps de Berier, *Polskie prawo...*, p. 91.

⁶¹ See ruling of the Supreme Court of 19.03.1947 (C 39/47), OSN(C) 1948/3, item 64.

⁶² See ruling of the Supreme Court of 2.02.1952 (C 946/51), PIP 1952/8-9, p. 360 and next.

⁶³ R. Longchamps de Berier, *Polskie prawo...*, p. 91.

⁶⁴ E. Till, *Prawo...*, p. 76.

is always unlawful when it is such as defined by the penal law⁶⁵. However, it is not concerned with punishable threats as defined by the penal law, as the hypothesis of discussed legal norm may cover existence of not punishable threats⁶⁶. Threat is not unlawful when a person using it, acting within the boundaries of the law, had the right to its application, e.g. the creditor that threatened the debtor with bringing a lawsuit for payment⁶⁷. Threat is a behaviour that substantially aims at causing doubt by another person concerning specified evil that may arise, in the case of lack of a declaration of will submitted with appropriate content⁶⁸. However, there is no doubt that “to acknowledge that a declaration of will was submitted under the effect of unlawful threat it is not necessary that the threatening requested directly submission of such statement, from which effects the submitting later repealed; it is sufficient that to avoid effects, which the contractor or a third person threatened, it was necessary to submit such declaration exactly to which the threatening aimed at”⁶⁹. The character of good to which the threat applies is irrelevant, it may refer to personal good or property, own or someone else’s⁷⁰. Danger of fulfilment of the threat must be serious namely it should lead in the person towards whom it was applied, forma-

⁶⁵ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 106.

⁶⁶ See: J. Namitkiewicz, *Kodeks...*, p. 54.

⁶⁷ F. Zoll, *Zobowiązania...*, p. 38.

⁶⁸ L. Domański, *Instytucje...*, p. 278.

⁶⁹ Decision of the Supreme Court dated 15.10.1946 (III C 597/46), OSN (C) 1947/2, item 48; in justification to this ruling, the Supreme Court stated that “to acknowledge (...) that the claimant sold property under the effect of unlawful threat of the Gestapo it is not necessary to claim that Gestapo directly demanded from the claimant’s sale of furniture almost for free to a German woman; it is enough that Gestapo ordered her to leave Toruń without furniture under pain of penalty that the threat was unlawful and that to avoid effects of this threat – complete loss of furniture – the claimant was forced to sell them almost for free to a German woman, at which Gestapo, among others, aimed. Thus, if the claimant under the effect of Gestapo order to Toruń leave under pain of penalty without the right to take furniture and without the right or possibility to sell it to Poles for appropriate price – she sold it almost for free to a German woman, she acted under compulsion, resulting from unlawful threat of penalty or loss of property in a justified fear that she may be threatened with serious personal or property hazard which could only be avoided by sale of furniture almost for free to a German woman”.

⁷⁰ R. Longchamps de Berier, *Polskie prawo...*, p. 92.

tion of conviction that the threat certainly will be met and that there will be no possibility to avoid this⁷¹. When assessing whether specific danger of fulfilment of the threat is serious, crucial importance has probability of its execution, although not without importance is also the type and size of the anticipated damage⁷². It should be indicated in addition that the basis for evasion of any legal effects is the concern treated as the defect of a declaration of will whose direct source is unlawful threat⁷³.

2.7. EXPLOITATION

Exploitation occurs in the case when one party uses recklessness, infirmity, lack of experience or compulsory location of the other party and in exchange for their service, accepts or reserves for themselves or another person, service whose property value at the time of entering into the agreement is strikingly high as compared to the value of mutual service (Article 42 § 1 CL)⁷⁴. A premise for application of institution of exploitation is thus determination of compulsory location on one side and taking advantage of this location by the Contractor by reservation of provision with strikingly high value in relation to the value of mutual benefit⁷⁵. Additionally, it is indicated that this calculation is not of exhaustive character⁷⁶. Institution of exploitation relates not only to mutual contracts, but also other charging contracts as e.g. to interest-bearing loan⁷⁷. L. Domański defines exploitation as action that “consists in reprehensive behaviour, intended to take advantage of weaknesses, impracticability or compulsory location of the other party by imposing contractual reservations, whose property value is

⁷¹ L. Domański, *Instytucje...*, p. 278.

⁷² *Ibid.*, p. 280; J. Namitkiewicz also indicates that the threat must be grounded, see: J. Namitkiewicz, *Kodeks...*, p. 55.

⁷³ L. Domański, *Instytucje...*, p. 278.

⁷⁴ On exploitation in the then European legislations see: I Koschembahr-Łyskowski, *W sprawie kodyfikacji naszego prawa cywilnego*, Warszawa 1925, p. 67-73.

⁷⁵ See justification of rulings of the Supreme Court of 29.10.1949 (C 105/49), OSN (C) 1950/2, item 30.

⁷⁶ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 111.

⁷⁷ R. Longchamps de Berier, *Polskie prawo...*, p. 95.

strikingly different”⁷⁸. Recklessness may consist in e.g. lack of ability to predict effects of undertaken activities, prodigality or imprudent pursuit to satisfy one’s own needs by use of material goods regardless of their price⁷⁹. Infirmity is weakening of mental faculties that limits awareness and freedom of will, and it can be acquired or exist since birth of a given entity⁸⁰, leading to a state when such an entity is unable to care for their own interest⁸¹. Lack of experience should be understood as no general messages concerning functioning of trade or lack of detailed information concerning a specific contract, resulting e.g. from a minor age⁸². Compulsory location may consist in danger being threatening to life, health, freedom, honour or property caused by e.g. critical financial location⁸³.

A gross difference of benefits of both parties is such a difference, which is obvious and extremely different from the relative market value of these benefits⁸⁴. The value of benefits from the time of conclusion of the contract is taken into account⁸⁵. A difference which corresponds to normal earnings of a given branch is not a gross difference⁸⁶. The Court by making the assessment of whether in a given actual situation a blatant relation of benefits of both parties occurred takes into account such directives as good faith, custom of fair trade, interest nature, rightness⁸⁷.

The party injured under exploitation may request reduction of their benefits or increase of mutual benefit, and when both is hindered, may repeal from legal effects of their declaration (Article 42 § 1 *in fine* CL).

⁷⁸ L. Domański, *Instytucje...*, p. 284.

⁷⁹ *Ibid.*, p. 285.

⁸⁰ *Ibid.*, p. 285.

⁸¹ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 111.

⁸² See: L. Domański, *Instytucje...*, p. 285.

⁸³ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 111; in decision of 23.04.1937 the Supreme Court stated that “no occupation or earnings on the part of the employee terminating a job contract does not prove alone his compulsory position”, II C 3172/36, OSN (C) 1938/4, item 166.

⁸⁴ L. Domański, *Instytucje...*, p. 285.

⁸⁵ R. Longchamps de Berier, *Polskie prawo...*, p. 95.

⁸⁶ I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 112.

⁸⁷ R. Longchamps de Berier, *Polskie prawo...*, p. 95.

Regardless of these claims the injured party may request compensation on the basis of general provisions⁸⁸.

2.8. REVOKING LEGAL EFFECTS OF A DECLARATION OF WILL SUBMITTED
UNDER THE INFLUENCE OF AN ERROR, DECEIT, THREAT AND EXPLOITATION

To revoke any legal effects it is enough to give notice, it is not required to submit suit to court. However, as the Supreme Court defined in the decision of 3.09.1945 “party (...) has the right to apply to court (...) with request to state that (...) its revoking legal effects of the declaration of will was executed according to the act and resulted in invalidation of the contract”⁸⁹. J. Namitkiewicz indicates as a matter of principle statement on evading legal effects of the declaration of will has out-of-court nature⁹⁰. However a written form of such notice is required, but only for evidence purposes⁹¹. Similar principles refer to revoking any legal effects of the declaration of will submitted under the influence of an error, deceit and exploitation. With regard to deceit and unlawful threat, we can refer to significant or insignificant contractual provisions, however, with regard to insignificant provisions notice on evading legal effects of the submitted declaration of

⁸⁸ *Ibid.*, p. 96.

⁸⁹ I C 241/45, OSN(C) 1945/1, item 3.

⁹⁰ J. Namitkiewicz, *Kodeks...*, p. 63; the Supreme Court in the substantiation of the ruling of 29.09.1948 recognized that “according to structure of the Code of Obligations existence of some defects in a declaration of will, such as an error, deceit and threat, gives to one who has submitted a statement, the right to one-sided and out-of-court evasion of any legal effects of one’s declaration of will (Article 43 § 1 CL). The second party towards whom submitting the declaration of will has evaded its effects, may either consider this revocation as justified and then the whole case finishes in general without intervention of court, or consider that revocation is for any reasons (e.g. due to lack of actual premises) groundless. In the latter case, the case by the initiative of one or the other party may be the object of the court that rules not constitutively about cancellation of a given declaration of will, but by declaration only whether non-court evading the effects of a declaration of will was justified”, C 157/48, OSN (C) 1949/2-3, item 42.

⁹¹ See: R. Longchamps de Berier, *Polskie prawo...*, p. 97; see also: F. Zoll, *Zobowiązania...*, p. 24 and ruling of the Supreme Court of 19.10.1945 r. (I C 691/45), OSN(C) 1947/1, item 6.

will does not involve invalidity of significant provisions⁹². Substantially, statement on evading legal effects shall not result in court proceedings, unless the other party undermines the basis for revocation of these legal effects⁹³. Then the party has the right to suit for benefits adjudication, or suit for determination⁹⁴. It is worth noting that in the case of deceit and also in the event when the other party through their fault has caused an error of the other party or in the case of exerting through their fault compulsion on contractor, liability for damages is possible on the basis of general provisions on compensation⁹⁵.

According to Article 43 § 2 CL the right to revoke any legal effects of a declaration of will, submitted under the influence of an error, deceit, threat or exploitation, shall expire: in the case of error or deceit – within one year after detecting them⁹⁶, in the case of threat – within one year from the date when the condition of concern ceased, in the case of exploitation – within one year after a declaration of will⁹⁷. In the case of exploitation any claim for reduction of own benefits, or increase in benefits of the other party cannot be claimed in the court after one year following the day of a declaration of will (Article 43 § 3 CL).

⁹² L. Domański, *Instytucje...*, p. 290.

⁹³ R. Longchamps de Berier, *Polskie prawo...*, p. 97.

⁹⁴ *Ibid.*, p. 97.

⁹⁵ *Ibid.*, p. 92-93.

⁹⁶ In the case of evasion of any legal effects of the declaration of will submitted under the influence of an error or deceit by a supervisor on behalf of a person being under the custody the annual date should be counted from the date of their detection by a supervisor, and if such detection on the part of a supervisor did not take place – from the moment of their detection after terminating care by the person previously undergoing care, see Decision of the Supreme Court dated 16.09.1950 (C 959/50), OSN (C) 1951/2, item 39.

⁹⁷ The Supreme Court indicated that the lapse in the period of occupation of the term in Article 43 § 2 CL cannot be accused, on evading the legal effects of a declaration of will due to exploitation, as owing to relations of that time it was impossible to make notice provided in Article 43 § 1 CL of the opposite party who was registered on the national German list, see decision of the Supreme Court dated 19.11.1948 (C 807/48), PIP 1949/5, p. 93 and next.

3. DEFECTS OF A DECLARATION OF WILL IN GENERAL PROVISIONS OF THE CIVIL LAW

At this point it seems purposeful to present description of defects in a declaration of will in GPCL of 1950, which replaced in this respect provisions of CL. Regulation stipulated the following defects of a declaration of will: lack of awareness or freedom, ostensibility, error and compulsion. *Prima facie* one can note substantial similarity of the mentioned defects in the declaration of will to regulation included in CL.

Lack of awareness or will consists in abnormal mental condition that excludes conscious or untroubled making decisions or expression of will caused by e.g. mental disease and mental deficiency and temporary interference of mental activities due to alcohol abuse or high fever⁹⁸. Its effect is absolute invalidity (Article 69 GPCL). Ostensibility is present when a person submitting a declaration of will with prior approval of its addressee, submits it so that performed activity did not cause legal effects, or cause other effects than those resulting from apparent legal activity⁹⁹. Apparent activity is also absolutely void (Article 70 § 1 GPCL).

The Act accepted the possibility of revoking any legal effects of submitted declaration of will due to an error¹⁰⁰ or threat (Article 72 § 1 and 75 GPCL). Deformation of a declaration of will by the person used to send it was equivalent with error¹⁰¹. Views of doctrine discussed above about these defects in a declaration of will as compared to CL have analogical application to error and threat defects binding on the ground of GPCL. Lack of regulations on exploitation in GPCL, due to further validity of relevant regulations of CL¹⁰².

⁹⁸ A. Wolter, *Prawo cywilne. Część ogólna*, Warszawa 1955, p. 282.

⁹⁹ *Ibid.*, p. 283.

¹⁰⁰ See: A. Kawałko, H. Witczak, *Prawo cywilne – część ogólna*, Warszawa 2006, p. 166.

¹⁰¹ A. Wolter, *Prawo...*, p. 285.

¹⁰² *Ibidem*, p. 282; in the post-war period when assessing premises of exploitation initially clause of good customs and public order was used, see decision of the Supreme Court dated 29.09.1948 (C 162/48), PIP 1949/6-7, p. 145 and next, and later on clause of principles of social coexistence in the People's State, see sentence of the Supreme Court of 9.02.1963 (II CR 180/62), OSNPG 1963/10, item 60.

4. FINAL REMARKS

There is no doubt that the present regulation of defects in a declaration of will in the Act of 23 April 1964 of the Civil Code¹⁰³ is a consequence of legislative achievements of the interwar period. Institutions included in CL have been adjusted to the contemporary legal trade, but in their scope they are very similar to interwar period regulations. In the section devoted to defects of a declaration of will, the Civil Code envisages a similar catalogue of these defects, there is lack of regulation on exploitation, which is regulated in Article 388 of the Civil Code. It is indicated that systematic character of regulations included in such a way has no greater importance for explanation of the structure of exploitation as defect of a declaration of will¹⁰⁴. It seems that the cause of concluding regulations concerning institutions of exploitation beyond section “Defects of a declaration of will” is the character of exploitation that refers solely to contracts, never to legal unilateral activities¹⁰⁵. The analysis of regulations of CL is even more important due to the planned new codification of the civil law the result of which is design of the first volume of a new Civil Code¹⁰⁶. It seems that the draft to a large extent continues the tradition of CL and of the Civil Code regulations, which may be reflected in future interpretation of a new Code.

SUMMARY

The article concerns defects of a declaration of will on the grounds of the Code of Obligations of 1933. Firstly, there is the description of specific defects regulated under the Code of Obligations, like a state of unconsciousness of temporary disturbance of mental activities, a lack of intent

¹⁰³ Journal of Laws of 1964, No. 16, item 93 as amended amendments hereinafter referred to as the Civil Code.

¹⁰⁴ B. Lewaszkiwicz-Petrykowska, *Wady oświadczenia woli w polskim prawie cywilnym*, Warszawa 1973, p. 12 and 188.

¹⁰⁵ *Ibid.*, p. 188.

¹⁰⁶ Project available on: <http://bip.ms.gov.pl/pl/dzialalnosc/komisje-kodyfikacyjne/komisja-kodyfikacyjna-prawa-cywilnego/> (9.05.2013).

to cause legal effects, ostensibility, an error, a deceit, a threat, exploitation. Then the author shows revoking legal effects of a declaration of will submitted under the influence of an error, a deceit, a threat and an exploitation. Next, there is specification of the General Provisions of the Civil Law of 1950 in the context of defects of a declaration of will.