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INTERPRETATION OF DECLARATIONS OF WILL BY PARTIES TO CIVIL-LAW AGREEMENTS

Abstract. Entering into a civil-law agreement always carries legal consequences. One of the most frequent mistakes committed by the parties entering into civil-law agreements is using ambiguous words or phrases in contracts. The interpretation of declarations of will should be distinguished from establishing their legal consequences. The interpretation of a declaration of will is a legal issue, whereas legal consequences of declarations of will may be specified right after establishing the meaning of a declaration of will. It is the interpretation that serves this purpose, but only after taking into consideration the consequences defined by legal norms. Legal interpretation aims at determining what rights a given person has or what responsibilities they are burdened with. The interpretation of declarations of will by the parties to civil-law relations is a complicated process. The directives and methods of interpretation do not always allow for a precise interpretation of declarations of will contained in agreements. To express their will, the parties concluding civil-law agreements tend to use ambiguous and unclear phrases, inconsistent with their actual will, being unaware of the effects a given declaration carries. That is why so many cases end up in court.

Introductory remarks

Entering into a civil-law agreement always carries legal consequences. One of the most frequent mistakes committed by the parties entering into civil-law agreements is using ambiguous words or phrases in contracts. The interpretation of declarations of will should be distinguished from establishing their legal consequences. The interpretation of a declaration of will is a legal issue, whereas legal consequences of declarations of will may be specified right after establishing the meaning of a declaration of will. It is the interpretation that serves this purpose, but only after taking into consideration the consequences defined by legal norms. Legal interpretation aims at determining what rights a given person has or what responsibilities they are

burdened with. The interpretation directives may be contained in legal provisions and this is when they are binding on the body applying the law, just like any legal norm. General interpretation directives have been included in Art. 65 of the Civil Code. Their purpose is to show what thinking processes must be started to determine the sense of a declaration of will. These should also be demonstrated in order to resolve the issue of whether a declaration of will was made at all in a given case, and not only to determine its content and meaning. (Radwański, 1996, p. 79). The interpretation of a declaration of will takes place based on Art. 65 of the kodeks cywilny (Dz. U z 1964 Nr 16, poz. 93 z późn. zm.) – hereinafter referred to as Civil Code – and is subject to appeal proceedings since potential errors in this respect constitute a serious infringement of substantive law provisions due to their wrong interpretation.¹

The interpretation of a declaration of will referred to in Article 65 of the Civil Code is therefore a set of actions undertaken to establish the meaning of a given statement. The purpose is to determine whether a given statement is intended to have a regulatory function or be a declaration of will. (V CSK 70/06; V CKN 801/00). The next step is to determine its meaning, essential from a legal point of view, that is the content of a regulation introduced. The object of interpretation is a person's conduct or a system of things or phenomena created by them and rendered inclusive of the accompanying circumstances and in the appropriate context. (Machnikowski, 2010, p. 98).

The interpretation of a declaration of will is a mental process aiming at interpreting or determining the appropriate meaning of a declaration of will made. This process takes place in accordance with the commonly accepted semantic directives, attributing certain meanings to the terms contained in a declaration of will. (Gawlik, Gajda, 2008, p. 137). The subject of a declaration of will may be any person who gets involved in the mental process of interpretation of a declaration of will, except that not every interpretation will be binding. It is only the interpretation of a body applying the law that is a valid interpretation and ultimately binding on all the participants of a legal transaction. When making an interpretation of a declaration of will, this body should apply the rules specified in the binding provisions of law, which are binding on them just like any other commonly binding provisions, and they should also apply the rules set out in judicial practice and achievements of the doctrine of law. (I PR 146/70).

The object of interpretation of a declaration of will is an external manifestation of an internal will of a person making a declaration, considered in the light of provisions laid out in Art. 60 of the Civil Code. The pro-

cess of making an interpretation refers to the external manifestations of will as perceivable phenomena or systems of things, that is to specific factual circumstances. These circumstances should be interpreted fully, that is in a particular situational context, in which the internal will was made by the declarant and where its manifestation could be observed. (Radwański, 2008, p. 39 and next). The subject of interpretation is a declaration of will considered in a particular factual situation with the accompanying circumstances, regardless of the fact if this declaration is a result of a one-sided legal transaction, or if it is an effect of a two-sided act, for instance in the form of a contracted agreement. It is always the very legal act or in fact its terms and not the effect that are subject to interpretation, and it should never be the case that as a result of interpretation made, the subjects making declarations of will are changed, or that the conclusions of interpretation are inconsistent with the very act as these conclusions are not the object of interpretation of a declaration of will and may be a subject of study in different civil law areas. (Doliwa, 2012, p. 258.).

According to Art. 65 § 1 of the Civil Code a declaration of will should be interpreted as required by the circumstances in which it was made, in accordance with the principles of social cooperation and established customs. However, Art. 65 § 2 of the Civil Code provides that in the case of contracts, the congruent intention of parties and the purpose of agreement rather than the literal wording, should be established. Therefore, Art. 65 of the Civil Code sets out basic directives on the interpretation of a declaration of will referring to all categories of legal acts (§ 1) and in particular to those concerning agreements (§ 2). The criteria for interpretation of declarations of will remain in concordance with the objectivisation concepts which emphasize the way of interpreting a declaration of will that may be reconstructed based on external, verifiable semantic rules related to the context in which a declaration of will was made. This statement is not contradicted by the interpretation directive referring to agreements and contained in Art. 65 § 2 of the Civil Code since the reconstruction of the congruent intention of the parties and purpose of the agreement should be done based on verifiable criteria and have a meaning understandable at least to the other party, i.e. to the contractor with whom the contract is made. Establishing the meaning of a declaration of will according to the rules specified in Art. 65 of the Civil Code means that it is this meaning exclusive of the subjective will of the parties and beliefs of the declarants that will be basis for determining the legal consequences and shaping the relations between the parties. It does not preclude the possibility of evading legal consequences arising out of the declaration of will with a different meaning and content attributed by the

declarant if there are any reasonable suspicions that there are flaws in the declaration of will, and especially those related to error and deceit. (Safjan, Pietrzykowski, 2011, p. 178).

Based on provision 65 of the Civil Code general directives referring to interpretation may be distinguished. The first directive refers to the socially-shaped semantic rules in language norms and established customs. The second directive refers to the need of considering all communications, taking into account their situational context, that is the circumstances in which they were made. In reference to the circumstances in which a declaration of will was made, it should be observed that in the process of making an interpretation they constitute a relevant criterion for the evaluation of its content since they introduce a situational context of revealing the internal will of the declarant, except that only the perceivable external circumstances of making a declaration may be of legal significance, whereas the subjective belief of the declarant does not carry this kind of weight. This view may be supported by the necessity to ensure safety of legal transactions and that is why the risk of erroneous expression of internal will is a burden on the declarant and not on the recipient. However, the above principle of analysing declarations of will is not binding in its entirety. Sometimes provisions of law provide otherwise and then in order to determine the meaning of the examined declaration of will, the internal will of the declarant will be a decisive factor, and not the externalised statement.

The third directive is based on the assumption of prudence and integrity of the parties making a declaration of will. This directive points to the purpose of making a declaration of will and the principles of social co-existence. (Radwański, 1996, pp. 181–182). The principles of social co-existence are certain norms of conduct, moral norms and values preferred in a given community, and also constituting the axiological explanation for the whole binding system of law. The application of social co-existence rules is caused by the social need of interpreting a declaration of will in the way which, as being compliant with these rules and norms, will allow for maintaining certainty of law and trust in safety of legal transactions, especially in the situation where as a result of failing to take account of them in the process of interpreting the declaration, the parties to a legal act could be treated unequally. The established customs are the common practice in relation to a certain conduct which, just like the principles of social co-existence have not been classified, but are commonly used both in internal and international relations. (Doliwa, 2012, p. 261).

Interpretation of declarations of will

The declarations of will should be interpreted according to the circumstances in which they were made since no universal rules can be applied to understand the context of a given declaration. In different contexts a declaration of will may have a completely different meaning. The interpretation of declarations of will in given circumstances depends on the set of external objectivised criteria made up by the principles of social co-existence and established customs. Both the principles of social co-existence and established customs should be correlated to the context in which a declaration of will was made. This context is set by such elements as the location of a given activity or the type or purpose of the very act.

Specifying the criteria resulting from the principles of social co-existence and established customs for specific circumstances entails the imperative of individual interpretation. Art. 65 of the Civil Code contains a general directive on establishing the correct meaning of a legal act. (I C 5/45). The complement to this general interpretation directive from Art. 65 of the Civil Code is a regulation contained in Art. 385² of the Civil Code according to which the compliance of agreement provisions with good practice is evaluated based on the state of affairs at the moment of entering into agreement, taking into consideration its content, circumstances of concluding it and other contracts related to the agreement including the provision being subject to evaluation.

The regulation contained in the above-mentioned provision aims at evaluating the compliance of agreement provisions with the principles of good practice. What emerges is also the interpretation directive which calls for a firm relativism of criteria and evaluation resulting from good practice for the whole of situational context the agreement is contracted in, including the legal connections related to the agreement. Determining established customs also occurs as required by the circumstances. The custom which cannot be ignored when determining the meaning of a declaration of will is of significance here.² This kind of evaluation should be conducted in consideration of the customs in operation at the moment of performing a legal act, and not at the moment of interpretation. (Safjan, Pietrzykowski, 2011, p. 178.).

The methods of interpreting declarations of will are a system of directives grouped around certain values understood as evaluative assumptions, showing the institutions applying the law the mode of conduct when establishing the meaning and content of declarations of will made by legal entities.

The first of the above-mentioned values grouping the interpretation directives is the real internal will of the legal entity making a declaration, being the result of their psychological experiences and internal decisions which should constitute grounds for establishing what method of interpretation should be adopted by the body applying the law for the interpretation of declaration of will made as the effect of these experiences. Another value is confidence which is evoked in other legal entities by a declaration of will. This confidence results from the need for legal certainty of transactions, thus when making an interpretation of a declaration of will, the person making this interpretation should take into consideration the cognitive skills of other legal entities being participants of the legal transaction. (Radwański, 1992, p. 46 and next).

Taking into consideration the above values, the following methods of interpreting declarations of will may be distinguished: (Radwański, 2008, p. 51 and next).

- the subjective and individual method, focused on the will of the legal entity making a declaration, taking the free will of the legal entity making a declaration as basis for entering into an obligation, being an internal psychological experience and hence the method ordering the interpreting body to make an interpretation of the declaration on these grounds, however inadequate and requiring complementing with objective measures also inclusive of other values;

- the objective (normative) method, focused on cognitive abilities of the recipient of a declaration of will, protecting the legal certainty of transaction and taking the objective meaning of words or conduct of the declarant as grounds for the correct interpretation, and requiring the interpreting body to ask a question of how a declaration of will would be understood by a normative pattern, that is any prudent and honest person in a specific situation of a legal entity making a declaration whose trust in safe legal transactions should be protected;

- the combined method, combining the merits of will and confidence, however requiring a clear system of preferences for these merits and the scope of application for directives putting them into practice, ordering the interpreting body making an interpretation to consider the meaning attributed to the declaration of will by the parties to the legal act, even if this meaning diverged from the objective sense of words and phrases, which is connected to the protection of trust and in the case of misunderstanding the meaning of a declaration of will by the recipient, or the understanding different than the one the declarant intended, and requiring to consider by the interpreting body the cognitive abilities of the re-

ipient in the context of a particular situation of making a declaration of will.

Art. 65 of the Civil Code does not tell us directly which methods must be applied by a given institution to make interpretations of questionable declarations of will. It merely contains guidelines in the form of imperative to consider the circumstances of making declarations of will, being element of general semiotics; references to general clauses in the form of principles of social co-existence recalling the morally preferred values in a given community and legal system as well as its established customs, that is certain social conduct repeated and acknowledged as an obligatory norm. (Radwański, 1992, pp. 58–59).

The method of interpretation contained in Art. 65 § 2 of the Civil Code is a combined method as it is based upon the objective and subjective criteria. According to it, the priority interpretation rule for declarations of will is an actual will of parties. The interpretation of agreement should not ignore the content verbalised in writing as the phrases and concepts used as well as the very systematics and structure of a speech act are one of the most essential interpretations of will of the parties, enabling its recognition and evaluation. Application of the method in question requires explanation how the parties really understood the declarations of will made by them, and in particular what sense they attributed to a given phrase or expression used in a declaration of will. (III CZP 66/95).

Interpretation of declarations of will made by parties to civil-law agreements

Establishing the content of a declaration of will means determining facts. (II UKN 9/96). Art. 65 § 2 of the Civil Code specifies the mode of interpreting the declarations of will in a different way than for interpreting a legal text. Contrary to legal norms, the legal acts, and especially agreements, regulate legal relations between parties. As a consequence the obligations established by way of agreement between the parties are not abstract in character like legal norms, but have individual nature, serving the purpose of furthering interests of parties according to their will.

An entity who desires to know the sense of a declaration of will makes its interpretation. In most cases this is the interpretation made by the body applying the law within the process of law application and within the framework of establishing factual grounds for decision. Each declaration of will, regardless of the form it was made in, is subject to legal interpretation.

Art. 65 of the Civil Code also includes declarations of will made in a written form. Then, the basis for interpretation will be linguistic rules and applicable principles arising under Art. 65 § 2 of the Civil Code. When applying the rules contained herein it may appear that contrary to the wording of agreement, the will of the parties was different. General directives for interpretation contained in the discussed provision are complemented by the so-called interpretation rules – special provisions, frequently using the phrase “in case of any doubts”, which order to adopt a specific meaning of the conduct described in them if its meaning cannot be determined with the use of rules framed under Art. 65 of the Civil Code.

According to Article 65 § 2 of the Civil Code when interpreting a declaration of will the circumstances in which the declaration was made should be taken into consideration, and the congruent intention of parties and purpose of agreement established, rather than relying on its literal wording. This provision undoubtedly allows for considering extra-textual circumstances including the purpose the parties had in mind when entering into agreement and establishing them with the help of evidence obtained from witnesses and witness deposition. (I CKN 815/97). Determining the actual understanding of a declaration of will by the parties is establishing certain facts. The need to conduct evidence proceeding for that purpose arises only when a common understanding of the declaration is disputable. It should be emphasized, however, that the fact that one of the parties denies giving the same meaning to the declaration of will as the other party, does not mean the non-existence of the common meaning (congruent intention of the parties) at the moment of making a declaration of will and does not preclude evidence proceeding for establishing it.

Since the psychological fact is being determined, only indirect evidence may be based upon it. These might be the declarations of parties to the legal transaction, made to each other and to other people, either at the same time or after making a disputable declaration of will, in which the parties explain their way of understanding this declaration. These might also be other conducts of the parties taking place after making a disputable declaration of will, and in particular the mode of exercising rights and fulfilling obligations arising on the grounds of this declaration. In the case of discrepancies between the understanding of agreement by the parties and the mode of its implementation presented in the proceeding, it is mainly the latter that corresponds to the actual understanding of agreement at the moment of entering into it. (Safjan, Pietrzykowski, 2011, p. 178).

The actions undertaken by the body applying the law and serving to interpret a declaration of will are made up of two stages. The first one

is establishing how parties understood the declaration made and if this understanding was congruent. The process means establishing facts and that is why it is called the subjective interpretation. The second stage takes place when the “congruent intention of the parties” cannot be established and it consists in determining what is the objectively adopted meaning of a given declaration, and this is the interpretation in the stricter sense, the so-called objective interpretation. (Machnikowski, Gniewek, 2010, p. 98.)

The interpretation of agreements should primarily take into consideration the actual will of the parties to agreement and this sense is expressed in Art. 65 § 2 of the Civil Code. In practice it is not always possible to determine the congruent will of both parties. It is not only the agreement provisions that should be analysed then. What may be important for establishing the congruent will of the parties are prior or later declarations and conducts, that is the so-called situational context. The meaning of a declaration of will made by the parties is essential but as of the moment it is made. Later changes in the way of understanding the declaration by the party are not taken into consideration. In the situation where a congruent change in the way of understanding the declaration by both parties making the declaration takes place, it should be regarded as change in the content of the whole declaration.

Only if based on these grounds, it is impossible to talk about the same understanding of agreement provisions by the parties, the natural step is to move to the next stage of interpreting agreements having in mind another merit, apart from that of respecting the will of a declaring party, which is the protection of trust of the recipient of a declaration of will. The Supreme Court in its judgment of June 11, 2008 (V CSK 2/08) declared that Article 65 of the Civil Code undoubtedly allows courts to take into consideration extratextual circumstances, including the purpose the parties had in mind when entering into agreement. When interpreting a declaration of will, and particularly when the very wording raises some doubts, what should be examined is not only how the declaration of will was understood by the person making the declaration, but also how it was understood by the recipient of the declaration. Both the person making the declaration of will and its recipient may effectively refer to the sense understood by them only if any participant of a legal transaction in a similar situation, and in particular with the same scope of knowledge about the declaration and circumstances of making it, would understand its meaning in the same way. Thus, it is the normative and individualistic point of view of the recipient who with due diligence required in a legal transaction (art. 355 of the Civil Code applied in a similar situation), and in professional relations, in consideration

of the professional character of activity, makes an interpretation intended to recreate the thinking of the person making a declaration of will. When making an interpretation of a declaration of will it should not be assumed that the parties making it acted in an irrational way or the way contrary to the logical reasoning.

On the grounds for the above-presented thesis the Court stated that Article 65 of the Civil Code contains an interpretive directive which allows for an accurate reading of intentions of the parties to the agreement. Therefore, it serves the purpose of establishing what intention of the parties was behind the use of a particular phrase. This provision requires that when interpreting the declaration of will, the “circumstances in which it was made” be taken into consideration, and establish here what the congruent intention of the parties and purpose of agreement were, rather than rely on its literal wording.

Undoubtedly, this provision allows courts for considering extratextual circumstances, including the purpose which the parties had in mind when entering into agreement. (III CZP 66/95; I CSK 261/07).

The text of agreement interpreted according to linguistic rules constitutes basis for attributing the sense it has in a given language. The party to an agreement should understand it in compliance with syntactic and semantic principles of the language in which a given document was made. This is, however, only an assumption which is not absolutely binding. The parties could understand a particular excerpt of the agreement in a different way, or one of the parties could have sufficient grounds to assign a different meaning to it from the common one. Then, in the course of interpreting declarations of will, this kind of situation should be taken into account. When interpreting an agreement based on linguistic rules, not only a controversial fragment of text should be taken into consideration, but also other provisions of agreement assigned to it, that is the language context.

Establishing the real intention of a person making a declaration is not admissible in the situation where the declaration, for instance a public oath, is intended for an unlimited circle of recipients or when an unspecified circle of people may in the future refer to its content, just like in the case of proxies, agreement forms, articles of association of legal persons, documents intended for circulation, such as bills of exchange, cheques, shares, bonds and others. In such cases the interpretation of a declaration of will lies in determining its commonly accepted meaning (objective interpretation).

According to wyrok Sądu Apelacyjnego w Katowicach z dnia 11 marca 2005 r. (I ACa 1606/04), the principles of interpreting agreements as set out in the provision of Art. 65 § 2 of the Civil Code are applicable to

the agreements made in writing only when the document provisions are so unclear that they may give rise to doubts about the intention of parties entering into agreement, and not when the parties expressed their will clearly enough in the content of agreement made in writing. After the manner of the above thesis the court fully recognized the *clara non sunt intrerpretanda* principle in the context of interpreting the provisions of civil-law agreements.

According to this principle what is clear does not require interpretation. The principle says that in the situation where after applying linguistic directives on interpretation, the meaning of a given provision does not any longer give rise to doubts, other arguments and methods of interpretation are not required. The above judgment met with a critical evaluation of legal theorists. Each sign needs interpretation in order to be comprehensible, and only after making an interpretation it could be decided if it is clear. (Radwański, 1996, p. 179). The thesis of the Appeals Court may be regarded as incorrect in principle, with the exception that it becomes justified in certain special circumstances, such as: clearly different will of the parties, the risk of circumventing the provisions about the form of legal transaction, the need to protect the trust of third parties or a potential entering into agreement by persons using professional legal services. (Koszowski, 2009, p. 72).

Interpretation of agreement and its purpose

Article 65 § 2 of the Civil Code requires that during interpretation the purpose of agreement be taken into consideration. The necessity to refer in the process of interpretation to the purpose of a declaration of will, which is an extra-linguistic indication of interpretation of a declaration of will, results from the imperative contained in the above provision.

The purpose of a declaration of will is a future state outside the text of declaration, which will be achieved only in the aftermath of performance of an obligation resulting from a legal act aimed at by the persons making a declaration of will who undertake certain activities to facilitate achieving this state. Therefore, it should be assumed that a legal act (closer goal) is a certain means to achieve the purpose of act (further goal), which may refer to a number of legal situations called social and economic or life goals, bringing sense to legal acts done by entities and expressing their needs and interests. “The purpose” of a declaration of will should be made distinct from its “content”. Applying this directive extends to all declarations of will made to other persons.

The purpose of legal act is its effect not included in the content of a declaration of will, the so-called further goal, that is the state of affairs which is supposed to be implemented as a consequence of exercising rights and fulfilling obligations resulting from the legal act performed. If parties agreed on the purpose of a specific agreement, it is this purpose that should be considered when interpreting their declarations of will. In the absence of purpose agreed, what should be taken into consideration is the aim understood objectively, that is the state of affairs which normally arises when implementing a legal act of a given type. The purpose of legal act has two meanings in the process of interpreting a declaration of will. Firstly, in the situation of a few competing results of interpreting the declaration the one that allows for a better and more effective achievement of the goal attributed to parties should be selected. This directive is, for instance, basis for applying the *in favorem debitoris* interpretation (if, in the case of free legal act or one-sided agreement, after applying general interpretive rules the sense of declaration is not clear, it should be interpreted in favour of the debtor, so as fewer obligations be imposed on them by way of declaration). Secondly, the criterion of purpose allows for giving a certain conduct the meaning of a declaration of will if achieving the result of a given conduct would not be possible without making this kind of a declaration of will. (Machnikowski, Gniewek, 2010, p. 98).

The purpose of agreement in the meaning given by Art. 65 § 2 of the Civil Code is mainly an individual aim concerning a specific agreement determined by specific interests of parties, and not the purpose belonging to a certain general category of agreements or class of legal acts. The purpose of agreement is designated by the function which parties choose for a given act within the framework of legal relations they are bound by. (Radwański, 1992, p. 17 and next).

An important issue is that when interpreting declarations of will the assumption should be adopted that their will was rational and the parties had as their aim achievement of results compliant with common reason and their interests. (IV CKN 1474/00).

According to Article 65 § 2 of the Civil Code in the situation where the proper sense of agreement established with the use of directives specified in it will diverge from a clear meaning in the light of language rules, the priority meaning gives the agreement sense given by the parties. Thus, the process of interpreting agreements may terminate on account of its clear sense only when the content of agreement becomes clear after applying consecutive rules of interpretation, that is after a prior establishing of the parties' intention and purpose of agreement. In order to determine how the

parties understood a declaration of will at the moment of making it, also conduct of the parties after making the declaration may be of significance, and it will be, for instance, the mode of performing the agreement (I PKN 532/97), extratextual circumstances, such as the factual context in which the contract was agreed and entered into (IV CK 582/03), the course of negotiation (I CKN 815/97), previous declarations of will by the parties (III CRN 160/75) as well as their status the manifestation of which could be running a business.

In the situation where parties to the agreement understood the declaration of will differently, then the declarations of will determined in keeping with the objective model will be regarded as legally binding. At this stage of interpretation, the need to protect the recipient of the declaration of will seems to be in agreement with the idea that the meaning of the declaration of will accessible to the recipient should be taken into consideration, assuming thorough interpretation attempts on their part. (III CZP 66/95). The above may be supported by what can be found in Art. 65 § 1 of the Civil Code saying that a declaration of will should be interpreted as required by the circumstances in which it was made as well as the principles of social co-existence and established customs.

The inability to establish the congruent intention of the parties by referring to the criteria contained in Art. 65 of the Civil Code may in specific circumstances indicate that the so-called dissent took place, that is the situation in which the agreement was ineffective in the face of a lack of agreement on its essential elements by the parties. The dissent treated in subjective categories as a lack of agreement on the internal will between the parties is not tantamount to the dissent specified above, in which the lack of consensus results from the inability to agree on the declarations of will by the parties according to the criteria of interpretation referred to in Art. 65 of the Civil Code. (Safjan, Pietrzykowski, 2011, p. 190).

Conversion of an invalid legal act

An especially important instrument of interpreting declarations of will is the so-called conversion of an invalid legal act. Under the civil law, conversion is a transformation of an invalid act into another valid legal act, corresponding at least partly to the will of parties. (Radwański, 1996, p. 246). It may take place when the established sense of a specific conduct by way of interpretation is not possible to be maintained on account of the fact that it is contrary to the law or principles of social co-existence.

In the above situation Art. 65 § 2 of the Civil Code requiring to consider the purpose of a declaration of will rather than its literal wording allows for another interpretation of this conduct, in which it would be an important declaration of will of a different content. Conversion consists in determining in what maximal possible scope the content of the declaration made may be maintained in order to serve the purpose of agreement, and then in subjecting the declaration in force to legal qualification.

Conversion cannot take place if the action was not a legal act at all and the declarations made were not declarations of will on account of a lack of intention to bring about a legal effect (a special case of this situation is performing an act where both parties are aware that it is invalid), and also in the situations under Art. 82 and 83 of the Civil Code. When making a conversion one should consider the principles of social co-existence (art. 65 § 1 of the Civil Code), have in mind the interests of both parties to the legal act so as not to distort the distribution of risk, benefits and burden planned by the parties in the created legal relation. (Machnikowski, Gniewek, 2010, p. 98).

Conclusions

The interpretation of declarations of will by the parties to civil-law relations is a complicated process. The directives and methods of interpretation do not always allow for a precise interpretation of declarations of will contained in agreements. To express their will, the parties concluding civil-law agreements tend to use ambiguous and unclear phrases, inconsistent with their actual will, being unaware of the effects a given declaration carries. That is why so many cases end up in court. How the parties understood their declarations of will may be learnt from their statements made in court proceedings. These statements will give information on how the parties interpreted and understood their declarations of will. If the parties interpreted and understood declarations of will in the same way, the court does not conduct further evidence proceeding and adopts thus specified declaration of will as basis for giving a judgment. In the situation where parties have contradictory ideas about the meaning of a declaration of will there are grounds for the court to start interpretation. The court should bear in mind the declarations made by the parties in which they explain the sense of the declaration of will made or received. Further conduct of the parties is of significance here, and especially the mode of performing the agreement. It may be indicative of how the parties understood their declarations of will.

If in the court proceeding the party will demonstrate the interpretation of agreement inconsistent with the mode of performing it by the very party, it should be assumed that the mode of interpretation is an inaccurate account of how in fact the party understood the agreement. Other types of conduct than the performance of agreement demonstrated *ex post* may point to the way of understanding the declaration of will made. (Radwański, 2008, pp. 61–62).

Article 65 of the Civil Code specifies very general ways of interpretation by pointing to only fundamental directives. The scope of application and interpretation criteria is restricted to the interpretation of the will of parties, that is the very content of agreement, and does not lead to any change in the parties to the agreement, or the effects contrary to its content. When establishing the meaning of a declaration of will, one should start with its sense resulting from linguistic rules where principles, phrases and language customs used in the environment the parties belong to should be taken into consideration, and only after that should general linguistic principles be considered. One should, however, have in mind not only an interpreted phrase, but also its context.

When implementing the principles of correct speech interpretation, it is not only the controversial speech extract that should be taken account of, but also other provisions related to it. It is impossible to adopt the meaning of the interpreted phrase which would remain in opposition to the other components of the statement. It would be contrary to the assumption of rational actions of the participants of a legal transaction. Narrowing down the interpretation to only “unclear” provisions of the agreement, could be supported by Art. 65 of the Civil Code if it said that the only significant meaning of speech was the one resulting from linguistic rules. The risk of doubts resulting from unclear provisions of the agreement, impossible to remove by way of interpretation should be borne by the party which prepared the agreement. (IV CSK 90/09). If the parties were previously in the same legal relations, one should also consider the meaning of unclear agreement phrasing which was applied in previous relations between the parties. (I CSK 250/08).

The interpretation of a declaration of will is establishing its meaning by way of interpretation and explanation. The choice of method for interpreting the declarations of will by the parties to the agreement is axiologically determined. According to Art. 65 of the Civil Code, adopting the combined method of interpretation is preferred. (III CZP 66/95). Using the combined method thanks to which the authentic will of the parties is subject to protection and justified expectations of the recipient of a declaration

of will, ensure certainty of a legal transaction. The purpose of interpretation is primarily to understand the authentic will of the parties entering into agreement and secondly showing the objective will of entities making a declaration of will (this is the order for agreements). It should be properly applied in reference to one-sided declarations of will. According to Art. 65 of the Civil Code the following are legally binding elements in regards to interpretation of ambiguous declarations of will by the parties to a civil-law agreement: the circumstances of making a declaration of will, principles of social co-existence, established customs as well as the congruent intention of the parties and purpose of the agreement.

The prevalent view among legal theorists favouring the *ex tunc* interpretation as the one which allows for taking account of and showing respect for the will of the parties at the moment of making declarations of will is, in my opinion, fully justified. However, with regard to the interpretation of agreements creating lasting obligation relations, the scholars of jurisprudence advocate using the adaptation interpretation taking into account the changing economic, social and political relations, facts, and customs. It does not seem indispensable especially when making an interpretation where the future way of agreement implementation is considered, which is not a divergence from the general rule of *ex tunc* interpretation, but may have an impact on the potential change in the primary agreement content, also to be considered during the interpretation, and which does not necessitate divergence from this interpretation, also when the potential change or a complementing of the obligation relation should be considered on account of future events, which in turn will be subject to a future, separate complementary interpretation. (Radwański, 2008, p. 62).

N O T E S

¹ Compare wyrok Sądu Najwyższego z dnia 20 lutego 1997 r., I CKN 90/96, *Prokuratura i Prawo* – supplement 1998, 1, s. 47.

² Compare wyrok Sądu Najwyższego z dnia 20 marca 1965 r., III PU 28/64; wyrok Sądu Najwyższego z dnia 27 października 1971 r., I PR 221/71.

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