DOI: 10.61905/wwr/176531

„Wychowanie w Rodzinie" t. XXX (4/2023)

Submitted: October 1, 2023 – Accepted: December 7, 2023

Aleksandra WILK*

Legal aspects of decision-making by family members on behalf of a person who has mental impairment caused by age or illness – selected issues

Prawne aspekty podejmowania decyzji przez członków rodziny w zastępstwie za osobę, u której doszło do osłabienia umysłowego wywołanego wiekiem lub chorobą – zagadnienia wybrane

Abstract

Introduction. The subject of considerations in this study are the legal aspects of decision–making by family members as a proxy for a person who has mental impairment caused by age or illness. In case law, the fact of mental weakness is considered insufficient to constitute incapacitation.

Aim. The research thesis of this study is the question of whether the legal instruments applicable in the Polish legal system regarding the issues raised allow for reconciling the right to decide about one's personal life with the rights of family members to make proxy decisions on behalf of another family member.

* **e-mail: aleksandrawilk.opole@gmail.com**
University of Opole, Department of Law and Administration, Institute of Legal Sciences, Katowicka 87a, 45-060 Opole, Poland
Uniwersytet Opolski, Wydział Prawa i Administracji, Instytut Nauk Prawnych, Katowicka 87a, 45-060 Opole, Polska
ORCID: 0000-0002-0252-1577

Materials and methods. Theoretical–legal and dogmatic-legal methods were used, based on the analysis of substantive content, views of representatives of legal doctrine and a broad analysis of the achievements of the judiciary. A problem-based analysis of the issue being the subject of the study indicated above was made.
Results and conclusion. Legal instruments in the case of persons with mental impairment caused by age or illness do not sufficiently allow for reconciling the right to decide about one's personal life with the rights of family members to make proxy decisions on behalf of a family member. The applicable legal regulations are inconsistent, and the assessment of the lack of awareness and loss of ability to make effective decisions does not have a sufficient legal framework or legally binding definitions. Therefore, it is reasonable to expect the introduction of a guardianship (preventive) power of attorney into the legal system.

Keywords: family, lack of awareness, legal capacity, power of attorney, error of declaration of will.

Abstrakt
Wprowadzenie. Przedmiotem rozważań w opracowaniu są prawne aspekty podejmowania decyzji przez członków rodziny w zastępstwie za osobę, u której doszło do osłabienia umysłowego wywołanego wiekiem lub chorobą. W orzecznictwie okoliczność osłabienia umysłowego uznaje się za niewystarczającą do ubezwłasnowolnienia, przy czym jednocześnie osoba ta na gruncie prawa cywilnego może zostać uznana za osobę nieposiadającą wystarczającej świadomości do podjęcia samodzielnie decyzji prawnie wiążących.
Cel. Celem rozważań w niniejszym opracowaniu jest wskazanie na niejednolitość przepisów prawnych oraz trudności interpretacyjne w obszarze zagadnień poruszonych w treści. Tezą badawczą niniejszego opracowania jest kwestia, czy instrumenty prawne dotyczące poruszonych zagadnień obowiązujące w polskim systemie pozwalają na pogodzenie prawa do decydowania o swoim życiu osobistym z prawami członków rodziny w zakresie podejmowania przez nich decyzji substytucyjnych w zastępstwie za innego członka rodziny.
Materiały i metody. Zastosowano metody teoretyczno-prawną oraz dogmatyczno-prawną, oparte na analizie treści merytorycznych i poglądów przedstawicieli doktryny prawa oraz na szerokiej analizie dorobku judykatury. Dokonano problemowej analizy zagadnienia będącego przedmiotem opracowania.
Wyniki i wnioski. W polskim systemie instrumenty prawne w przypadku osób, u których dochodzi do osłabienia umysłowego wywołanego wiekiem lub chorobą, nie pozwalają w dostatecznym stopniu na pogodzenie prawa do decydowania o swoim życiu osobistym z prawami członków rodziny w zakresie podejmowania przez nich decyzji substytucyjnych w zastępstwie za członka rodziny. Obowiązujące regulacje prawne są niespójne, a ocena braku świadomości i utraty zdolności do skutecznego podejmowania decyzji nie

ma wystarczających ram prawnych i legalnie obowiązujących definicji. Uzasadnione jest wobec tego oczekiwanie wprowadzenia do systemu prawnego pełnomocnictwa opiekuńczego (prewencyjnego) według zasad proponowanych w przedkładanych wielokrotnie projektach regulacji prawnych.

Słowa kluczowe: rodzina, brak świadomości, zdolność do czynności prawnych, pełnomocnictwo, błąd oświadczenia woli.

Introduction

The legal implications of family ties is a momentous issue, but also one that raises many questions. The mental deterioration of a family member – most often a parent – caused by age or illness is a situation that affects not only the patient himself, but also his or her immediate family. It necessitates his or her support and often leads to a rearrangement of the lives of other family members. They are confronted not only with the necessity of caring for the sick person, but also of participating in decision-making, representing him or her in front of offices, institutions, courts, dealing with his or her financial issues, housing, making decisions that have legal consequences. Good family relationships based on trust are certainly circumstances that reduce the risk to the legal situation of a person who, due to age or illness, loses the ability to make informed decisions about his or her person or property. However, blood ties, good or even bad family relations do not constitute a criterion entitling, by law, descendants (children, grandchildren) to make decisions in place of the parent, even in the parent's best interests. Indeed, in the Polish legal system, one of the most important human rights is the right to self-determination and to decide on one's personal life, and the right to decision-making autonomy, which is directly related to the capacity to take legal action. Neither of these rights is automatically extinguished in the event of mental infirmity caused by age or illness, even when such a situation occurs suddenly, unexpectedly. Nor does it automatically give family members the right to decide on all matters relating to that person's legal situation. Nor does the attainment of a certain age by a parent-senior cause a loss of legal capacity. Against this background, many doubts and difficulties arise that family members face when they have to take over the care of a parent. For example, when an elderly or ill person's health deteriorates suddenly, he or she becomes incapable of giving informed consent to health services. When communication with her is impossible, managing her day-to-day affairs becomes quite a challenge for family members. The range of difficulties the family will face when powers of attorney have not previously been granted is enormous. These may include, for example, situations relating to the decision to place a parent in a nursing

or residential care facility, hospital admissions for examinations, treatment, access to information and even the right to access funds held in a bank account. The doctrine of law points out that in the case of patients experiencing permanent incapacity and loss of decision-making competence, staying in hospitals or care and treatment institutions, the necessity arises to take a number of actions concerning this person and not involving a serious threat to their health and life (Szeroczyńska, 2013). In the current state of the law, the separate consent of the guardianship court is needed for each of these actions. A distinction must of course be made between the legal situation of a person who has previously been incapacitated and whose legal guardian is authorised to make decisions. In numerous situations, however, there is no basis for this beforehand and many decisions have to be made immediately.

At present, the person suffering from a dementia disorder also has no say in the choice of legal guardian appointed by the court should the need arise. To this should be added the concern that not every relative is trusted by the patient concerned. At the moment of unconsciousness, he or she is no longer able to choose the person to whom he or she entrusts the management of his or her affairs. Unfortunately, there is no solution in the Polish legal system, such as a guardianship power of attorney, which is permitted in other countries and whose validity would commence precisely at the moment of the principal's loss of decision-making competence. The legal instruments currently in force in the Polish civil and family and guardianship law system, which family members may use in such a situation, will be analysed in this paper.

The paper uses different terms for a person who requires support or decision-making substitution from family members: a person with age-induced mental impairment, a person with a dementia disorder, a person incapable of conscious expression of will, a person with whom communication is not possible[*] etc. While it is clear that medically these are not the same terms, legally, for the purposes of this study, it has been assumed that these are decisionally incompetent persons whose medical condition causes a legally significant limitation on their ability to make informed decisions about their person and their property. The term can also be adopted to refer to adults with difficulties in making legally significant decisions.

[*] Cf. Kleniewska, Szeroczyńska, 2012, p. 107. The authors point to a broad group of adults with difficulties in making decisions of legal significance. They include persons with intellectual disabilities, mental illnesses, disorders of memory, logical thinking, perception or communication resulting from neurological, endocrinological, cardiological or post-traumatic disorders, in addition to persons whose disorders are due to age (e.g. those suffering from senile dementia), complete loss of consciousness, and total loss of consciousness. In addition, people with impairments due to age (including senile dementia), complete loss of consciousness (in a coma or persistent vegetative state), locked-in syndrome, autism or inability to communicate due to inability to move a muscle (as a result of ALS or trauma), as well as people with impairments in decision-making as a result of addictions.

The latest statistics highlight the need to come to terms with the fact that we are becoming a so-called greying society, and that the ageing population is by far the most important factor in the demographic transformation of the 21st century. We cannot, for obvious reasons, predict the consequences of diseases, the timing of their onset, the extent of any loss of consciousness. All of us, and older people in particular, therefore have grounds for concern in terms of access to accumulated financial resources, decision-making in the area of health care, personal affairs and even care.

The Central Statistical Office clearly indicates that the ageing of the population is increasing in Poland, and the share of older people in the population is steadily rising. According to Central Statistical Office data published at the end of 2021, the number of people aged 60 and over was 9.7 million and increased by 0.2% compared to the previous year. The percentage of elderly people in the Polish population reached 25.7%. According to a forecast by the Central Statistical Office, the number of people aged 60 and over in Poland is expected to increase to 10.8 million in 2030 and to reach 13.7 million in 2050. The elderly will account for approximately 40% of Poland's total population (Central Statistical Office, 2022). Adapting legal provisions to the needs of this social group seems to be a natural process of evolving the legal system.

Decision–making autonomy and the right to decide on one's personal life

The right to decide on one's personal life is guaranteed to everyone in Article 47 of the *Polish Constitution*. According to this regulation, everyone has the right to legal protection of his or her private life, family life, honour and good name and to decide on his or her personal life. It is recognised in the doctrine of law that the granting of the right to an individual to decide on his or her personal life guaranteed by Article 47 of the *Polish Constitution* expresses the principle of self-determination (autonomy) of the individual, which is closely linked to the obligation to respect human dignity (Safjan, Bosek, 2016). The doctrine of law also emphasises that the right to individual self-determination is now recognised as one of the most important subjective human rights. In turn, respect for individual autonomy is essential for the respect of human dignity. Also, no age-related factor should affect the scope of protection of the dignity inherent in everyone (Tworkowska-Baraniuk, 2016). Particularly important in the context of this study is the view expressed by Irena Kleniewska and Małgorzata Szeroczyńska that legal capacity is an expression of the right to self-determination in the context of decisions of legal significance and a manifestation of the autonomy of the individual in shaping his or her own legal situation (Kleniewska, Szeroczyńska, 2012). Autonomy, understood as freedom from coercion by others, is expressed, inter alia, in the freedom to make personal decisions without restrictions (Zurzycka, Radzik, 2015). This right,

although guaranteed by the *Polish Constitution*, is not absolute. However, the severity of the disease symptoms may constitute grounds for limiting the freedom to make decisions with legal effect.

The boundary between these areas of human rights protection is very subtle. There are no legal regulations that would indicate specific situations justifying the application of a limitation to human decision-making autonomy. In the Polish legal system, the source of interpretation of this issue should be sought in the content of Article 30 of the *Polish Constitution*, according to which respect for human dignity is the most important constitutional principle, and the essence of this dignity is superior to the Basic Law itself. Restrictions on the exercise of constitutional freedoms and rights may take place only in cases indicated in this regulation[*]. The Constitutional Tribunal (TK) has also expressed its opinion on this issue, holding that all actions of public authorities should, on the one hand, take into account the existence of a certain sphere of autonomy and, on the other hand, these actions may not lead to the creation of legal or factual situations depriving an individual of his or her sense of dignity (*Judgment of the Constitutional Tribunal*, 2001). The jurisprudence of the Constitutional Tribunal has repeatedly commented on the criteria justifying the restriction of decision-making autonomy. For example, in its judgment of 9 July 2009, the Court expressed the view that the self-determination of the individual is subject to limitations due to the objective order of values established by the legislator (*Judgment of the Constitutional Tribunal*, 2009).

The above considerations about everyone's decision-making autonomy, about the right to decide on one's personal life, have a unique dimension in the situation of people who, as a result of age or illness, lose their decision-making capacity. Family members acting out of concern for their parent's well-being should therefore not assume that they are fully entitled to make decisions in his or her stead if his or her state of health enables him or her to participate in decision-making. It would also seem to be dignified and justified by respect for the parent to respect his or her wishes as to the decisions and solutions he or she has made while still fully conscious. Indeed, it will be pointed out on several occasions in this study that neither age nor illness take away a person's fundamental rights, and are often not even grounds for limiting or removing legal capacity.

Undoubtedly, the extremely difficult task facing family members of a person with age- or illness-induced dementia is to act in such a way as to respect their choices,

[*] *Constitution of the Republic of Poland* Article 31(3): "Restrictions on the exercise of constitutional freedoms and rights may be established only by law and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morals, or the freedoms and rights of others. Such limitations may not impair the essence of the freedoms and rights."

to act for their benefit and not their own. A solution to the issue of autonomy could be to introduce into the legal order the possibility for older people to regulate their own affairs in case they are unable to make certain decisions in the future. In particular, it would be an expression of respect for the decision-making autonomy of the sick person to enable him or her to designate a trusted person who would be empowered to act on his or her behalf in the event of loss of decision-making competence. We are referring here to the power of attorney for guardianship, the principles of which will be discussed in detail later.

State of mind and capacity to act with legal effect

According to Article 11 of the *Civil Code* (c.c.), full legal capacity is acquired upon coming of age. From the moment of acquiring full legal capacity, the ability to carry out, by one's own action and in one's own name, actions producing legal effects arises. In civilian studies, this view is well established (Gniewek, Machnikowski, 2021). The provisions of the *Civil Code* clearly specify that persons under the age of 13 and persons who are completely incapacitated (Article 12 of the *Civil Code*) do not have the capacity to perform legal acts. On the other hand, minors who have reached the age of 13 and partially incapacitated persons have limited capacity (Article 15 of the *Civil Code*). However, having legal capacity does not guarantee that every action taken will be valid. This is because the mere capacity to perform legal actions does not automatically determine the full effectiveness of an action performed by the one who possesses it. Invalidity may result from a breach of law or principles of social co-existence (Article 58 of the Polish *Civil Code*), or may be related to the insanity of the person performing the act (Article 82 of the Polish *Civil Code*). As follows from Article 14 §1 of the *Civil Code*, a legal act performed by a person who lacks legal capacity is invalid. An exception is a contract commonly concluded in minor current affairs of everyday life, which becomes valid upon its execution, unless it entails a gross disadvantage for the person incapable of legal actions (Article 14 §2 of the *Civil Code*).

The discussion on the impact of a person's state of consciousness on the legal effectiveness of his or her decisions should therefore begin with an analysis of the content of Article 82 of the *Civil Code*. Pursuant to this regulation, "a declaration of will made by a person who, for any reason, was in a state preventing him or her from making a conscious or free decision and expressing his or her will is invalid. This applies in particular to mental illness, mental retardation or any other, even transitory, disorder of mental functions" (*Act*, 1964b). It is worth noting that the legislator distinguishes as two separate ones: a state excluding conscious decision-making and free decision-making. In the doctrine, attention is drawn to the consistency of the line of jurisprudence,

from which it follows that the person making the declaration of will may, despite retaining consciousness, be in a state of lack of freedom (Załucki, 2023). Indeed, according to the position of the Court of Appeal in Białystok:

> [...] the inability to freely express one's will may also affect a person in a state of severe illness and extreme exhaustion of the organism, who, even if he or she retains consciousness, is unable to oppose his or her actual will to external influences and involuntarily participates in actions initiated and controlled by others (*Judgment of the Court of Appeal in Białystok*, 2018).

In view of this issue, it is necessary to emphasise the correct position expressed by representatives of the legal doctrine that lack of awareness and freedom, even if permanent, does not exclude legal capacity. Such capacity is excluded only by incapacitation (Osajda, Borysiak, 2023). This view was expressed many years ago by the Supreme Court, which stated in a resolution of the Supreme *Court*(7) of 12 December 1960 that a person's actual intellectual capacity and actual capacity to discern actions do not affect the scope of legal capacity (*Resolution of a panel of 7 Supreme Court judges*, 1960). A difficulty therefore arises in taking care of a number of matters of a person who has lost full consciousness, as he or she still has legal capacity, and the lack of his or her consciousness will legally invalidate the decisions taken by him or her. On the other hand, a family member who is not yet a court–appointed legal guardian is not entitled to take decisions in place of that person.

In the Polish legal system, it is not permissible to relinquish legal capacity either in whole or in part. However, when a person would like to grant a power of attorney as part of his or her right to decide on his or her personal life, he or she may only do so with effect from the moment of granting the power of attorney (he or she must, of course, be aware at the moment of granting the power of attorney) and not for the future, in case, for example, he or she loses the capacity to decide consciously.

Lack of awareness in interpretations of the current legal regulations is treated as a state of lack of discernment, inability to understand one's own and others' behaviour or inability to realise the meaning and consequences of one's own conduct (Wilkowska-Płóciennik, Szereda, Beger-Smurzyński, 2020). Civil law provisions do not define the term "incapable of giving informed consent." According to Justyna Zajdel-Całkowska, the term has also not been sufficiently explained in the doctrine (Zajdel-Całkowska, 2021). However, the author points out that one should not equate a person incapable of giving consent with a person incapable of understanding the information. Such a person is referred to, for example, in Article 31(6) of the *Act of 5 December 1996 on the professions of physician and dentist* (*Act*, 1996).

A presumption of lack of awareness on the part of the person performing the legal act

is not permissible. The Supreme Court confirmed this view in a 2015 decision (*Supreme Court decision*, 2015). The Supreme Court stated that the lack of capacity to consciously perform such acts must be proven. Indeed, mental illness or another type of disorder does not automatically mean that a person who has made a declaration of will should be considered to have made that declaration in a state that precludes the conscious or free making of a decision and expression of will. It is necessary to establish whether the person acted with sufficient discernment at the time the declaration was made. It is not excluded that, despite mental illness or other disorders, the declaration was made by a person acting consciously and freely (*Judgment of the Court of Appeal in Białystok*, 2015). In one of the judgments, an extremely important view was expressed that:

> Not every cognitive impairment of the brain caused by Alzheimer's disease necessarily proves the prerequisites of Article 82 of the *Civil Code*. It is only when the condition of the ill person is such that it cannot be assumed that he or she acts with awareness of external circumstances or the nature of the action (the circumstances under which it is performed, its content or effects) is so complex or surprising for the ill person that he or she is not capable of consciously assessing them that a defect in the declaration of will referred to in Article 82 of the *Civil Code* can be established. On the other hand, the mere diagnosis of an illness does not entitle one to formulate such a thesis (*Judgment of the Court of Appeal in Szczecin,* 2019).

Furthermore, it is necessary to agree with the view of Zbigniew Radwański, according to whom the provisions of the *Civil Code* do not introduce gradations of the state of unconsciousness, which means that the assessment of whether a given subject acted with sufficient discernment at the moment of making a declaration of will is therefore a matter for the court in each case, or for the notary in the case of notarial actions (Radwański, 2008).

The interpretation of the concept of a state excluding consciousness, as is evident from the above analysis, is found primarily in the jurisprudence. In the Supreme Court's order of 30 April 1976, the position was expressed that a state excluding consciousness is "a lack of discernment, an inability to understand one's own behaviour and the behaviour of others, an inability to realise the significance of the consequences of one's own conduct" (*Supreme Court Order*, 1976, item 78). A very important position was also expressed in the Supreme Court's judgment of 1999, according to which "mental dysfunction alone does not cause a loss of legal capacity and a loss of procedural capacity, although it may constitute a defect in the declaration of will" (*Supreme Court Judgment*, 1999). The concept of the state of unconsciousness was also addressed by the Supreme Court in its judgment of 7 February 2006. It ruled then that:

> The state of exclusion of conscious decision-making and expression of will cannot be understood literally, so it does not have to mean a complete lack of consciousness and cessation of brain function. The existence of such a state is sufficient, which implies a lack of discernment, an inability to understand one's own actions and those of others and a failure to realise the meaning and consequences of one's own conduct (*Supreme Court Judgment*, 2006).

On the other hand, dementia capable of causing mental disorders has been defined by the Supreme Court as a condition comparable to that of a person suffering from Alzheimer's disease, when the impairment of memory and orientation is very profound. In order to interpret whether so-called other mental disorders affect the assessment of a person's unconsciousness, it is worth taking into account the view of the Supreme Court expressed in 2005, according to which these disorders must be of a magnitude that excludes completely conscious decision-making and expression of will (*Supreme Court Order*, 2005).

It should therefore be borne in mind that, in accordance with the provisions of the *Civil Code*, a legal act performed by a person who, for any reason, was in a state that precludes the conscious or free making of a decision and expression of will, is invalid. In the case of persons with mental infirmity caused by age or illness, this issue is particularly relevant for notarial acts (Nowocień, 2013). This is because deteriorating health may prompt such a person to decide whether to grant a general power of attorney, a specific power of attorney or to make decisions related to financial and inheritance issues in the event of death. According to Article 86 of the *Law on Notaries of 14 February 1991* (*the Law*, 1991), a notary is not allowed to perform a notarial act if he or she becomes doubtful whether a party to the notarial act has legal capacity. The literature indicates that this provision has not been perfectly drafted (Gniewek, 2000). It is suggested that the scope of application of the provision should be broader than the regulation concerning legal capacity as understood according to the *Civil Code*, and thus that it should also include the state excluding conscious or free decision-making and expression of will as defined in Article 82 of the *Civil Code*. (Budzianowska, 2000). Undoubtedly, however, it is incumbent on the notary to assess whether the person from whom he or she receives the declaration of will does so with full awareness. According to the *Penal Code,* a notary, in the event of an erroneous assessment, may incur civil liability for damage caused in the performance of notarial acts, as well as criminal liability for failure to fulfil his or her duties as a public official (*Act*, 1997b, art. 231). The prerequisite for such liability may be the failure to detect a defect in the declaration of intent in the form of lack of awareness, which the notary should have noticed at the time of drafting the notarial act. On the other hand, the certification of untruths by a notary constitutes a criminal act under Article 271 of the Code of Criminal Proce-

dure. The above-mentioned issues relate to a delicate and complex matter which, due to the difficulty of assessing a person's mental state at the time of making a declaration of intent, may constitute grounds for abuse. This problem is recognised and signalled in the doctrine of law (Wajdzik, 2011).

Superintendent for a disabled person – is this solution enough?

A solution that would allow family members to efficiently and effectively take care of the affairs of a parent who is mentally impaired but not incapacitated could be the institution of guardianship for a disabled person, provided for in Article 183 of the *Family and Guardianship Code* (*Family* Code), i.e., a guardianship appointed for a person who needs assistance to manage his or her affairs, affairs of a particular type or to deal with a particular matter. In my opinion, this is a legal instrument which is not an ideal solution for the person referred to in the study. However, another solution in the Polish legal system has not been envisaged by the legislator, except of course for incapacitation. According to this regulation, "a guardian is appointed for a disabled person if the person needs assistance to manage all matters or matters of a particular type or to settle a particular matter. The scope of the guardian's duties and powers shall be determined by the guardianship court" (Article 183 §1 of the *Civil Code*). This provision in the previous state of the law contained the term "handicapped person" instead of "disabled person." It was not until the amendment of the *Civil Code* in 2007 that this term was changed. The Supreme Court, in its order of 8 December 2016 (*Order*, 2016), stated:

> [...] a state of mental infirmity – in particular due to age – which does not qualify as mental illness, mental retardation or any other type of mental disorder that defines the grounds for guardianship (Articles 13 and 16 of the *Civil Code*), constitutes a disability within the meaning of Article 183 of the *Civil Code.*

It should also be emphasised that disability under Article 183 of the *Civil Code* does not include mental illness, as this is a prerequisite for incapacitation and not for the appointment of a guardian for a disabled person (*Order*, 1995, item 134).

However, it is worth noting that not every elderly person is a disabled person, and in fact the regulation of Article 183 of the *Civil Code* is addressed to such a person. It should be emphasised that a guardian appointed on this basis is not a legal representative of a disabled person, cannot represent that person in court proceedings, and is only empowered to assist that person in managing his or her affairs, and not to manage affairs for that person. His or her role is to facilitate the disabled person's handling of affairs due to the factual difficulties that have arisen. Thus, a guardianship can only

assist the person in factual acts that do not require declarations of will. The establishment of a guardianship does not exclude the effectiveness of the represented person's personal actions. Such a person continues to have legal capacity. Importantly, even when the court extends the guardian's competence to include legal actions, he or she does not become the guardian's legal representative. This legal solution is referred to as "specific" in the legal doctrine. As Wojciech Rożdżeński emphasises, in contrast to guardianship over a partially incapacitated person incapable of fully autonomous actions, or guardianship for a person incapable of defending his or her rights, guardianship on the basis of Article 183 of the *Civil Code* is established for persons who, due to their limited physical capacity, need factual assistance in realising their rights (Rożdżeński, 2021). Maria Boratyńska, on the other hand, takes the position that guardianship for a disabled person is currently the only institution that could be used to calm the patient's fears of losing autonomy (Boratyńska, 2014).

A guardian for a disabled person is therefore, as a general rule, only authorised to take factual actions on behalf of the guardian. The authorisation to perform legal acts would have to be expressly derived either from a decision of the guardianship court or from a separate power of attorney granted by the guardian, provided that such power of attorney was still granted in a state of full awareness and freedom, in accordance with the previously mentioned civil law provisions. Without these previously extended powers, a unilateral legal act undertaken by a guardian appointed under Article 183 of the *Civil Code* is invalid. This is provided for by the provisions of the *Civil Code*, i.e. Article 103 §1 of the *Civil Code,* according to which "if the person entering into a contract as an agent lacks authority or exceeds its scope, the validity of the contract depends on its confirmation by the person on whose behalf the contract was concluded." In the case of a person who has suffered mental infirmity caused by age or illness, confirmation of such a power of attorney is virtually impossible. In turn, Article 104 of the *Civil Code* provides that: "A unilateral legal act performed in another's name without a power of attorney or in excess of its scope is invalid."

Due to the imperfection of this legal institution, W. Rożdżeński rightly points to the need to introduce institutional support, actively promoting decision–making autonomy, but without limiting legal capacity, but with competences defined more precisely and in a less questionable manner than on the basis of Article 183 of the *Civil Code* (Rożdżeński, 2021).

An attempt to respond to the above-mentioned needs for regulatory changes is the adopted amendment to the provisions of the Family and Guardianship Code, which will enter into force in 2024. According to the *Act on amending the Family and Guardianship Code and certain other acts of 28 July 2023* (*the Act*, 2023), as of 15 February 2024, the provisions amending the existing regulation of the guardianship for a disabled person (Article 183 of the *Family and* Guardianship *Code*) will enter into force. The new

wording will not only change the existing scope of this regulation, but will also add additional content*.

A study on the correctness of the use and establishment of guardianship by the courts under Article 183 of the *Civil Code* was conducted by judge dr Dagmara Olczak-Dąbrowska. The author indicates that in almost 44% of the cases examined, the reason for which a guardianship was requested was diseases related to ageing, e.g. Alzheimer's disease, Parkinson's disease, dementia syndrome. The causes of disability included a variety of conditions, i.e. those related to the awkwardness of life as well as the lack of awareness and contact with the environment. As a result of her research, the author found that in many cases, persons with disabilities did not retain the capacity to manage their own proceedings and the appointment of a guardian for them under Article 183 of the *Civil Code* was not an adequate form of legal protection for their condition. Indeed, guardianship is not an alternative to incapacitation (Olczak-Dąbrowska, 2014).

It can therefore be taken the view that the institution of guardianship for a disabled person provided for in Article 183 of the *Family Code* is not a sufficient legal solution to provide a solution to the problems faced by family members of an elderly or ailing person in the situations referred to in this study.

---

* *Family and Guardianship Code*, Article 183 of the *Family and Guardianship Code* in the wording as of 15 February 2024:

§1. If an adult person with a disability needs support in managing any affairs, affairs of a particular kind or in dealing with a particular matter, a guardian shall be appointed for him or her. The duties and powers of the guardian shall be determined by the guardianship court.

After §1, §11 – 14 is added as follows: §11. A guardian for a disabled person shall be appointed to represent him or her only if the court so orders. The guardianship court may specify the matter or range of matters indicated in the order appointing the guardian in which the guardian is entitled to represent the disabled person.

§12. A person of full age who has consented to this and whose personal qualifications justify the belief that he or she will duly fulfil the duties entrusted to him or her as guardian of a disabled person may be appointed guardian. A disabled person may nominate a candidate for curator.

§13. When selecting a guardian and defining the scope of his or her duties and powers, the guardianship court takes into account, in particular, the way in which the disabled person functions, including in terms of his or her intellectual functions and the way in which he or she communicates with the environment.

§14. The superintendent shall agree with the disabled person on the manner in which the matters referred to in §1 are to be conducted or dealt with, and shall inform the disabled person of the measures taken and their results so that he or she can make decisions and take action appropriate to the current state of the case (*Act*, 2023).

Granting power of attorney to family members

A possible solution in the case of an elderly or sick person who loses the ability to make effective decisions with legal effect is certainly the granting of a power of attorney by him or her to a designated person. This institution is regulated by civil law. Pursuant to Article 98 of the *Civil Code,* a general power of attorney includes the authorisation to perform acts of ordinary management. For actions exceeding the scope of ordinary management, a power of attorney specifying their type is required, unless the law requires a power of attorney for a particular action. By interpreting this regulation, it is possible to distinguish between general, special, generic and procedural power of attorney. A general power of attorney is usually granted for activities related to the ordinary management of the principal's affairs. A special power of attorney, also known as a notary's power of attorney, involves authorising a specific person to perform a specific action, and this power of attorney is drawn up by a notary. A generic power of attorney specifies the type and scope of activities to be performed by the representative, whereby this type of power of attorney, unlike a special power of attorney, allows for the cyclical, repetitive handling of matters of a particular type. On the other hand, a power of attorney for litigation is a type of authorisation for a person to represent him or her in court cases. However, it should be clearly emphasised that the granting of each of these powers of attorney is only possible if the state of consciousness of the principal makes it possible to conclude that he or she is doing so knowingly. It is therefore a kind of way of safeguarding the legal situation of a person who foresees that, due to a progressive illness or old age, he or she will not be able to perform all actions in his or her affairs. By granting a power of attorney, however, the specifically named person acquires the powers conferred by such a power of attorney as soon as it is granted. However, as it is not common, especially among the elderly, to grant powers of attorney while they still have the will and the power to decide for themselves, there is no solution in the Polish legal system whose effectiveness would begin only at the moment when these persons lose their decision-making competence. Such a solution is the guardianship power of attorney, which, although advocated for some eight years, is still not allowed in the Polish legal system.

In connection with Poland's ratification of the *Convention on the Rights of Persons with Disabilities* (ratified by the President of the Republic of Poland on 6 September 2012, came into force for Poland on 25 October 2012), the chairman of the Civil Law Codification Commission appointed a problem team on the legal capacity of persons with mental disabilities (Machnikowski, 2016). The task of the team was to design changes that would bring Polish law in line with the standards set by Article 12 of *the Convention* relating to the legal capacity of persons with disabilities. Among other things, the team attempted to draft legislation on guardianship power of attorney.

In 2015, draft legislation was prepared. Unfortunately, the work was discontinued. A preliminary draft of the legislation was also prepared by the Foundation for Safe Legal Transactions, but this work also failed. In 2022, in the list of legislative works of the Council of Ministers, information appeared about the commencement of work on a law introducing a new institution in the form of a guardianship power of attorney to the *Civil Code. A Draft Act amending the Act – Civil Code and certain other acts* was submitted. The planned date of adoption of the draft by the Council of Ministers was expected to be in the fourth quarter of 2022. Currently, the government website states that the planned date for the adoption of the draft by the Council of Ministers is Q3 2023 (see *Draft Law on Amendments to the Law – Civil Code and Certain Other Laws*).

According to the draft, a guardianship power of attorney would involve appointing a proxy to take care of the personal affairs and property of, for example, an elderly person in the future, in the event that the principal becomes mentally disturbed, mentally incapacitated or demented and thus permanently incapable of making decisions regarding his or her own rights. This would be an excellent solution whereby the principal could secure his or her situation for the future, so that only when his or her state of mind makes it impossible for him or her to take care of his or her own affairs adequately will the person designated by him or her acquire the authority to be his or her attorney-in-fact. That is to say, it is appropriate to entrust one's affairs to a trusted person consciously chosen by an elderly person or a person suffering from an illness whose prognosis is unfavourable.

The most distinctive feature of a guardianship power of attorney, however, is the separation in time between the moment when the power of attorney is granted and the moment when the capacity to exercise it arises. This is because the power of attorney would only come into effect when the notary issues a certificate at the request of the guardianship attorney, who would be obliged to submit a medical certificate on the principal's state of health, from which it will be apparent that the principal is in a state that prevents him or her from managing the proceedings independently and prevents him or her from managing his or her own affairs. The health certificate would be issued in accordance with the procedure set out in the *Act on the Profession of Physician and Dentist.* The regulations could specify the rules for issuing such a certificate, e.g. by requiring the signature of two doctors, e.g. a neurologist and a psychiatrist, in order to eliminate doubts as to the state of consciousness of the principal. The drafts rightly envisaged the possibility of limiting the scope of the mandate or even excluding certain activities from it and leaving this to the decision of the principal.

In order to preserve the protection of the principal's rights, such a power of attorney would be granted in the form of a notarial deed, as would its revocation. In addition, the proponent proposed an amendment to Article 176 of the *Civil Procedure Code* to the effect that, should the need for total guardianship arise, the guardianship attorney would be the candidate for legal guardian in the first instance. The guardianship at-

torney would also be the person entitled to apply for guardianship. The maintenance of the Register of Guardianship Powers of Attorney would be entrusted to the National Council of Notaries. On the other hand, in the event that the acts or omissions of the proxy threatened or infringed the interests of the principal, the court would be empowered, at the request of any interested party or ex officio, to initiate proceedings for the revocation of a guardianship power of attorney. For the duration of these proceedings, the interests of the principal would be safeguarded by a ruling suspending or limiting the powers of the guardianship attorney, as well as by the possibility of appointing a guardianship counsel for him or her. It is worth emphasising that the granting of a power of attorney would not result in a loss of capacity. It would be a form of support for the actions of the principal, similar to the model of supported decision-making currently proposed as an alternative to incapacitation, as will be discussed later. Preventive power of attorney is used successfully in many European countries. In Germany, it has been in place for a long time and is of great interest to citizens. In the German legal system, it is called a preventive power of attorney (*Vorsorgevollmacht*). An attorney may, within the scope of the power of attorney granted to him or her, for example, deal with banking matters, insurance matters and conclude contracts with a nursing home. In accordance with §1896(2) of the German *Civil Code* (see *Bürgerliches Gesetzbuch*):

A guardian may only be appointed to the extent that it is necessary. A guardianship is unnecessary if the affairs of the adult can be dealt with by an attorney [...] just as well as by a guardian. Powers of attorney are registered by the German Federal Notarial Chamber (Bundesnotarkammer).

An example justifying the introduction of this solution into the Polish legal system may be the situation of a patient admitted to hospital in order to implement a burdensome and invasive treatment with an uncertain prognosis. The patient is warned about the possible failure of the treatment. The patient consents to the healthcare service and, at the same time, becomes aware of the need to appoint someone to look after his or her interests while he or she is unconscious for a prolonged period of time or put into a medically induced coma. A guardianship power of attorney would reconcile the already indicated issues related to the right to self-determination and decision-making about one's personal life with the need to limit decision-making autonomy for legitimate reasons, in the best interests of the principal.

Decision-making by family members to protect the health of the parent

It is particularly difficult emotionally, but also legally, when a parent becomes a patient of a medical entity. He or she is weakened by illness, incompetent in decision-making,

unable to make the whole range of decisions required by the medical staff during the hospital stay. The situation is particularly unclear when we are not dealing with decisions of urgency, which do not fall within the scope of the consent exemption referred to in medical law. Polish law does not provide for the possibility for family members to make health care decisions on behalf of, for example, their parent, when that person is legally and physically independent. According to M. Boratyńska, there are no protection-worthy reasons why a patient's family should be privileged to make decisions together with the doctor, without the patient's participation (Boratyńska, 2014). It should therefore be clearly emphasised that, in the current state of the law, there are no grounds for recognising the permissibility of granting a power of attorney to consent to the treatment of an adult.

The patient's informed consent is, in the current state of the law, the basis for the provision of health services by a doctor. As stipulated in Article 32(1) of the *Act of 5 December 1996 on the professions of physician and dentist* (*Act*, 1996 [uzl]), a physician may perform an examination or provide other health services, subject to the exceptions provided for in the *Act,* upon the patient's consent. If, on the other hand, the patient is incapable of giving informed consent and does not have a statutory representative (he or she has not been completely incapacitated) or if it is impossible to communicate with him or her, then the authorisation of the guardianship court is required (Article 32(2) of the Uzl). The legislator has only allowed that in a situation where an examination of such a person is necessary, consent may be given by the actual guardian. The definition of a de facto guardian is provided for in the *Act on Patients' Rights and Patients' Ombudsman* (*Act*, 2008), according to which a de facto guardian is defined as a person providing, without statutory obligation, permanent care for a patient who, due to age, health or mental state, requires such care (Article 3(1)(1)). The provision of further health care services, in the case of the impossibility of communicating with the patient and the absence of a statutory representative, is possible only after obtaining the consent of the guardianship court (Article 32(8) Uzl). From the perspective of the issue discussed in the study, an extremely important regulation is provided for in Article 33(1) Uzl. The examination or provision of other health care services to a patient without his or her consent is admissible if he or she requires immediate medical assistance and, due to his or her state of health or age, cannot give consent and it is not possible to communicate with his or her legal representative or actual guardian. However, this provision will only apply in cases where immediate medical assistance is necessary for the elderly person. On the other hand, in the case where a surgical procedure is necessary or the application of a treatment or diagnostic method posing an increased risk to the patient, when it is not possible to obtain informed consent from the patient, the doctor may also perform such actions only after obtaining the consent of the guardianship court. Article 34(6) of the Uzl defines these activities as necessary

to remove the danger of the patient's loss of life or grievous bodily harm or serious disorder of health. The interpretation of the above regulations was expressed, inter alia, in the Supreme Court judgment of 2007, according to which services, even those that are life-saving but not urgent, do not fall within the scope of the exemption from consent (*Supreme Court judgment*, 2007). Only when the delay caused by the consent procedure would threaten the patient with loss of life, grievous bodily harm or serious disorder of health, the doctor is entitled to take action without the consent of the patient's legal representative or the consent of the competent guardianship court. The issue of consent for examination and treatment in medical law is also regulated by the legislator in the *Act of 6 November 2008 on Patients' Rights and Patients' Rights Ombudsman* (*Act*, 2008). Pursuant to Article 17(2) of this Act, the statutory representative of a patient who is a minor, completely incapacitated or incapable of giving informed consent has the right to consent to an examination or the provision of other health services by a physician. In the absence of a legal representative, this right, with regard to the examination, can be exercised by the factual guardian. As Dorota Karkowska (2016) points out,

> [...] the provisions of the Patients' Rights Act concerning surrogate consent in Article 17(2) are drafted in such a way as to suggest that persons who are actually incapable of giving informed consent, although having legal capacity, persons who are mentally ill or mentally handicapped (but not incapacitated) have a legal representative.

As has already been emphasised many times, a representative is not automatically appointed for such persons if there are no prerequisites for this under civil law. This is an example of yet another inconsistency in the law and inconsistency on the part of the legislator in creating regulations concerning such important areas of citizens' lives.

The provisions of medical law thus leave no doubt as to the lack of decision-making power of family members in the area of health care of the incapacitated parent, with the exception of consenting to his or her examination. Despite the very likely difficulties arising from this, the Polish legal system considers it impermissible to grant a health, medical power of attorney. According to W. Rożdżeński, the institution of a medical power of attorney would be a guarantee of respect for the patient's autonomy, which in the current reality ends at the moment of unconsciousness. In the author's opinion, such a state of affairs means that patients with a progressive disease or before a difficult and risky operation, as well as those who are severely physically disabled or facing the prospect of losing their factual competence are deprived of the possibility to decide about this most personal sphere, which is their health (Rożdżeński, 2021). These statements are referred to in medical law as *pro futuro* statements. They are allowed in many other countries, but not in Poland. They allow for the determination of medical care when the patient will not be able to express his or her will himself or herself. These

may include situations such as life support in a vegetative state, treatment or not for terminal illnesses, as well as resuscitation, being an organ donor (Poglódek, Mostowik, 2018).

The problem with the decision-making capacity of the patient's family members, in addition to the issue of consenting to the procedure, may also relate to the issue of their obtaining information about the patient's condition. We find a very specific solution in this respect, which often comes as a surprise. At the beginning of the analysis of the law in this respect, reference should be made to the content of Article 31(2) of the uzl, pursuant to which information on the patient's state of health, diagnosis, proposed and possible diagnostic and therapeutic methods, foreseeable consequences of their application or abandonment, results of treatment and prognosis may be provided by the doctor to other persons only with the consent of the patient or his or her legal representative. If, on the other hand, the patient is unconscious or incapable of understanding the meaning of the information, then, in accordance with Article 31(6) of the *Act,* the doctor shall provide the information to a close person within the meaning of Article 3(1)(2) of the Act of *6 November 2008 on Patients' Rights and Patients' Rights Ombudsman* (*Act*, 2008). Close persons are defined by the legislator as: a spouse, a relative up to the second degree or a relative up to the second degree in a straight line, a statutory representative, a person in cohabitation or a person indicated by the patient*. Thus, without prior authorisation by the principal, the next of kin should not even be informed of the state of health as long as the patient remains conscious. When a patient admitted urgently does not have time to authorise someone from the family to receive information and the disorder of consciousness is temporary, an interpretative doubt arises as to whether the doctor is authorised to provide information to family members about the patient's state of health. In this respect, however, the medical law provides a solution by allowing the family member concerned to be authorised in advance to obtain information about the patient's state of health and to inspect the medical records on an ongoing basis. However, this authorisation must not provide for any decision-making powers. The patient would, however, need to be aware that his or her condition may change, to foresee that he or she may not be able to consent to the provision of information even to his or her immediate family. This knowledge may prove to be very important, as it is necessary to emphasise once again in this study that the mere existence of blood ties neither entitles one to make decisions nor to obtain information about a parent, even when he or she is an elderly and very ill person. This applies even to a guardian appointed by the court for a disabled

* First degree of affinity in the direct line are the spouse's parents-in-law and mother-in-law; second degree of affinity in the collateral line – the spouse's siblings and their spouses: brother, sister, brother-in-law, sister-in-law. Relatives to the second degree – father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter.

person (Article 183 of the *Civil Code*), who can only assist the patient in expressing his or her will and in decisions concerning treatment, even when the patient retains little consciousness of mind or is only physically disabled.

A completely different situation arises when a patient objects to informing his or her relatives about his or her health condition and at the same time there is a risk of infecting them with an infectious disease. In such a situation, the doctor acts on the basis of Article 14 (2) §2 of *the Act on Patients' Rights and Patients' Ombudsman* and Article 40 §2 pt. 3 of *the Act on the Medical and Dental Profession* and is exempt from the obligation to keep information about the patient's health condition confidential (Fiutak, 2019). The immediate family should be informed of the existing risk, regardless of the patient's objection.

Decision by family members to place an incapacitated person in a residential care facility

Also of relevance is this area, which relates to the possibilities the law provides for deciding on the placement of a parent who does not or is not able to give informed consent for this type of health care service in a care and treatment facility [zakład opiekuńczo-leczniczy] (ZOL).

In 2018, the Ombudsman pointed out that the procedure for admission to care and treatment facilities of incapacitated persons who, due to their state of health, are unable to sign the relevant application themselves, should be laid down by law. In view of the current gap in the law, such applications are signed by the patient's relatives, although they are not entitled to do so, and the directors of the facilities agree to this solution for the good of the patient. In the current state of the law, the manner and procedure of directing persons to nursing and therapeutic care and nursing-care institutions is regulated by the *Regulation of the Minister of Health of 25 June 2012 on directing persons to nursing and therapeutic care and nursing-care institutions* (*Act*, 2012) (updated: *Notice of the Minister of Health*, 2022). According to the regulation, the basis for admission to ZOL is a referral, which is issued by a doctor at the request of the beneficiary. In this activity, in accordance with the current legal regulations, an ailing, aged parent cannot be relieved or replaced by relatives. The social expectation of regulating this situation is certainly different. The indicated regulation stipulates that an application, a referral, as well as a nursing interview and a medical certificate are not required when the guardianship court issues a decision to place the recipient in a care facility. In this case, however, a court proceeding is needed, and sometimes the patient's condition requires immediate placement in a care facility. Also, the provisions of the medical law on mental health care, which regulate this issue, may not always be applicable. In the doctrine of law, the definition of the scope of the competence of the guardianship court in rela-

tion to the placement of a patient in a care and treatment facility has long been the subject of controversy (Słyk, 2019). A scattering of regulations between medical law and social welfare law is pointed out, with the result that there is currently no clear, unambiguous legal basis defining the rules for placing a patient in a ZOL on the basis of a court decision. The law does not provide for a regulation relating directly to the referral of persons to a care and treatment facility without their consent, as is the case with the referral of persons to a social welfare home – this issue is regulated by the *Act of 19 August 1994 on the protection of mental health*. What we have, therefore, is legal chaos, which is not conducive to the effective protection of the rights of a person in need of care and is a real inconvenience for their family members. Moreover, completely different principles and different legal regulations apply when the need for placement in a care and treatment facility is related to the mental illness of the patient, because then the provisions of the *Act of 19 August 1994 on the protection of mental health* (*Act*, 1994) apply. These issues are beyond the scope of this paper, but in some cases family members should also consider the provisions of the law in this area. This is because the psychiatric wards of residential care institutions are intended to serve persons who, as a result of mental illness or mental retardation, are unable to meet the basic needs of life, are unable to be cared for by others, need constant care and nursing, and do not require hospital treatment.

Decision-making by family members on financial matters

The mental infirmity of a loved one means that he or she is often temporarily or permanently unable to deal with financial matters as well. In this respect, the rules provide for the possibility of preventing difficulties, although, as in the case of a power of attorney, prior action by the principal who still retains full consciousness is necessary. The management of financial matters by family members is problematic when the loss of awareness and decision-making incompetence of the parent occurs suddenly or when the parent has failed to take care of the issue in the past and has not given appropriate instructions.

This issue is worth analysing from the perspective of three situations: the access of family members to the money accumulated by the parent in a bank account, the right to draw social security benefits in the form of cash (when the parent does not have a bank account) and the accessibility of the pension benefit of family members when the parent is placed in a care and treatment facility.

By submitting the appropriate instructions to the bank, the accumulated funds can be managed in the event of illness or death. A bank account holder with full legal capacity may grant a power of attorney to manage the account to another natural person with full legal capacity. Within the framework of the power of attorney granted, the attorney performs specific payment instructions. In the case of a general power of attorney, the attorney

has the right to act in the same capacity as the account holder. In the case of a specific power of attorney, on the other hand, the power of attorney has the right to dispose of the account only within the scope specified in the power of attorney by the account holder, e.g., only by using the card. However, under the power of attorney, it is not possible to terminate or amend the agreement, issue a bequest instruction in the event of death, apply for revolving credit on the account, etc. This is because the right to do so is retained by the principal, who still has full legal capacity. It would therefore seem that granting a power of attorney is the way to solve problems. Unfortunately, banks require in practice that bank powers of attorney is given in the presence of a bank employee, which is an insurmountable barrier in the case of elderly, sick and immobile people. Moreover, banks refuse to accept powers of attorney granted even in the form of a notarial deed, which has no legal basis. In view of this situation, in 2017 the Ombudsman asked the National Council of Notaries to develop a model notarial power of attorney that can be used in the relationship with a bank. In response, the National Notary Council issued an opinion in 2019, which concluded that the failure of financial institutions to respect powers of attorney in the form of a notarial deed is unfounded and incomprehensible. The Council stressed that a power of attorney in the form of a notarial deed is an official document, drawn up by a person of public trust, which in itself is a guarantee of its credibility and correctness as to form and content (National Notarial Council, 2019).

It is also necessary to emphasise that, in accordance with Article 101 §2 of the *Civil Code,* a power of attorney over a bank account generally expires upon the death of the holder of the bank account or the person in whose favour the power of attorney was granted. Thus, upon the death of a parent, the family member holding the power of attorney **loses all rights to submit instructions to the bank regarding the account, including the right to make withdrawals from the account.** Consequently, making transfers or ATM withdrawals after the account holder's death is illegal and may give rise to charges of theft or extortion.

In order to prevent difficulties related to accessing a parent's bank account in the event of the parent's death, the law provides for the possibility for the account holder to make an instruction to this effect. According to the wording of Article 56(1) of the *Banking Act of 29 August 1997* (*Act*, 1997c), the holder of a bank account has the possibility to give an instruction to the bank to make a withdrawal of a certain sum of money from the bank account after the death of the account holder in favour of a person or persons designated by the holder. This action is commonly referred to as a **deposit instruction in the event of death.** The holder of a bank account may instruct the bank in writing to make – after his or her death – a withdrawal from the account to the persons indicated by him: spouse, ascendants, descendants or siblings of a specified sum of money. The amount of the withdrawal cannot be higher than twenty times the average monthly salary in the enterprise sector without profit distributions, as announced by the President of the Central Statisti-

cal Office, for the last month before the account holder's death. **In 2023, this amount exceeded PLN 130 000. However, the instruction must be given in person at the bank in the presence of a bank employee.**

In the analysis of the scope of the entitlement of family members in financial matters, it is also necessary to point to the regulations authorising knowledge of the bank accounts held by the deceased parent. Indeed, pursuant to Article 92ba. §1 pt. 1 of *the Banking Act*, the bank is obliged to provide, inter alia, to a person who has obtained a legal title to an inheritance from an account holder, collective information on the holder's bank accounts, including joint accounts, without indicating the details of the joint holder. Indeed, banks have been obliged to maintain central information on accounts and make the information available free of charge to the person entitled to obtain it. (Article 92bd(1) of the *Banking Law of 29 August 1997*, updated: *Notice of the Speaker of the Sejm*, 2022).

In addition, the legislator has provided for solutions in the event that family members need to collect pension benefits in place of a parent. This issue is regulated in Article 136b of the *Act of 17 December 1998 on pensions from the Social Insurance Fund* (*Act*, 1998) (updated: *Notice of the Speaker of the Sejm*, 2023). If the case file shows that it is necessary to appoint a legal guardian for the person entitled to a pension, benefits may be paid to the person who has actual care of the pensioner until the guardian is appointed. What is needed is a declaration confirmed by an authority which, by virtue of its tasks, has information concerning the exercise of this care. However, the provision does not define the concept of the person exercising actual care. It can therefore be assumed that it refers to a person who manages the affairs of the pensioner on a regular and ongoing basis and provides assistance with activities of daily living due to the pensioner's illness, disability or age. However, it is not clear what authority would have to confirm this person's care if the parent remains at home under the care of descendants and does not receive inpatient care.

Incapacitation or a model of supported decision-making?

The institution of incapacitation in the Polish legal system is the most intrusive in the sphere of human decision-making autonomy. The law provides for two types of incapacitation, i.e., total and partial. A person may be placed under plenary guardianship if, as a result of a mental illness, mental retardation or other mental disorder, in particular drunkenness or drug addiction, they are unable to direct their actions (Article 13 §1 of the *Civil Code*). The court's decision to place an adult under plenary guardianship results in the adult's loss of legal capacity.

A partially incapacitated person is a person who needs assistance to manage his or her affairs, but his or her condition does not justify total incapacitation (Article 16

§1 of the *Civil Code*). However, the prerequisites justifying the incapacitation of such a person do not exist in every situation, nor does that person have a say in who is entrusted with the legal guardianship of that person. In this way, the individual is, as it were, deprived of the right to decide on his or her personal life. This extremely sensitive area should take into account extra-legal aspects, such as, for example, trust, family relations, lack of willingness to hand over one's affairs to a particular family member who declares a willingness to take over legal guardianship. The Polish civil law system does not provide for incapacitation in respect of specific activities or spheres of life. Nor is the incapacitation limited in time or subject to any requirements for periodic verification (Grzejszczak, Szeroczyńska, 2012).

The doctrine of law calls for changes to the provisions on guardianship due to, among other things, changing social conditions, including demographic and cultural changes, especially regarding the perception of persons with disabilities or mental disorders (Kociucki, 2013). The reason to consider changing this institution was the judgment of the Constitutional Tribunal of 7 March 2007 (*Judgment of the Constitutional Tribunal*, 2007). The Court clearly suggested the need for comprehensive changes to the institution of incapacitation in Polish law. It emphasised that in most countries there is now a move away from rigid restrictions on the rights and freedoms of mentally ill, disabled or addicted persons to more flexible regulations, tailored to specific situations by the court deciding the case. The UN Committee on the Rights of Persons with Disabilities, in its recommendations of 29 October 2018 to Poland, recommended, inter alia, the repeal of all discriminatory provisions of the *Civil Code* and other acts allowing the deprivation of legal capacity of persons with disabilities. In addition, it recommended that Poland establishes a procedure to regain this capacity and that it develops such a mechanism for supported decision-making that respects the autonomy, will and preferences of persons with disabilities.

Beata Janiszewska emphasises that incapacitation does not serve to deprive a person of his or her inherent and inalienable dignity, his or her right to private life and equality before the law. Instead, it aims to enable participation in legal transactions thanks to the actions performed by a guardian or curator – a statutory representative (Janiszewska, 2017, p. 609). Irena Kleniewska and Małgorzata Szeroczyńska postulate the elimination of the institutions of plenary and partial incapacitation from Polish civil law, i.e. the abandonment of these institutions in favour of supported decision-making. The authors emphasise that the incapacitation currently in force in Polish civil law should be regarded as violating the dignity of the incapacitated person and thus as contrary to the UN Convention on the Rights of Persons with Disabilities (Kleniewska, Szeroczyńska, 2012). In connection with the aforementioned judgment of the Constitutional Tribunal, the doctrine started to consider alternative solutions that could replace the institution of guardianship. According to representatives of the doctrine of law, incapacitation constitutes too far-

reaching an interference in human freedom and rights, is a drastic restriction of decision-making autonomy, deprives a person of his or her independence and destroys his or her motivation to learn to function independently (Kociucki, 2012). Advocates have also called for incapacitation to be replaced by a system of supported decision-making. It has been pointed out that even if a person with a disability needs extra help to make important life decisions, the right to make their own choices should not be taken away. The provision of appropriate support allows the person to retain legal capacity, i.e. the freedom to make decisions about their own life (*Replacing guardianship...*, 2022).

Summary

The issues identified in the study are discussed in the context of the right to make decisions about one's personal life, which the *Polish Constitution* guarantees to every person. A limitation of decision-making autonomy is often the need to make decisions as a substitute for a person who has lost decision-making competence due to age, illness or emergencies. This role is most often undertaken by family members. However, they are repeatedly confronted with systemically inconsistent legal solutions which, on the one hand, should guarantee an elderly, ill or decision-unconscious person the constitutional right to decide on his or her personal life, but on the other hand, should provide for legal instruments through which family members can effectively make decisions in the interests of that person. It seems extremely difficult to reconcile these two areas, which is unfortunately reflected in inconsistent legal solutions. The indicated difficulty arises, for example, from the fact that a person who has lost full consciousness still has legal capacity, unless, of course, he or she has previously been placed under guardianship. The deterioration of a person's health does not automatically give his or her family members the right to decide in his or her stead, although they may make such an erroneous assumption on the basis of the existence of blood ties.

In the case where a power of attorney has not been previously granted and mental infirmity occurs, the proposal of the legislator is that the court appoints a guardian for the disabled person; however, as emphasised in the doctrine of law, this guardianship is not an alternative to incapacitation. However, as indicated in the study, this is not a solution that meets the real needs of such a person and his or her family members. There is therefore a need to introduce into the legal system – as has been advocated for a long time – active support for decision-making autonomy, without limiting legal capacity, but with competences defined more precisely and in a less questionable manner than under Article 183 of the *Family Code.*

Another example of non-uniformity in the law, making it difficult for family members to effectively protect the rights of a person in need of support, is the issue of consent

for the placement of an incapacitated person who is unable to give informed consent in a care and treatment facility. In the current legal system, we do not find a statutory regulation on the basis of which it would be possible to place a person in a ZOL without their consent, as is the case when persons are sent to a nursing home without their consent under the *Mental Health Act.* Indeed, there is no clear legal basis for the court to decide on the placement of a person in a care and treatment facility for reasons other than psychiatric indications. The authority for the court to consent to placement in a ZOL was introduced by the legislator only in a regulation, which raises doubts as to the compliance of this regulation with Article 31(3) *of the Constitution of the Republic of Poland* defining the possibility of limiting the rights of an individual only by means of a law. The regulation is the only legal act that explicitly provides for this. However, it should be taken the position that this type of legal act should not be the basis for issuing a ruling resulting in such a serious interference with personal freedom and inviolability of a citizen.

The above analysis of the legal regulations in this area, in force in Poland, also allows one to conclude that it is justified and necessary to introduce into the Polish legal system a tool in the form of a guardianship, preventive power of attorney, which would allow for real protection of the right to decide about one's personal life. This solution would be a manifestation of the legislator's care for the effective protection of the rights of persons who foresee the loss of the ability to make conscious decisions either as a result of deteriorating health, or fears about the effect of a planned operation, or simply as a "just in case." There is no doubt that people in an ageing society need tools with which they can decide for themselves who will take care of their personal and property affairs in the event of loss or reduced consciousness due to illness in the future. This protection is primarily expressed in respecting the individual's wishes wherever possible and in line with his or her well-being, and avoiding court proceedings where they are not necessary. The possibility of a guardianship power of attorney could, in many cases, be an alternative solution to the forms of interference in an elderly person's decision-making autonomy currently provided for by law, which would certainly have the effect of relieving the courts in this regard. It could also be an effective tool to combat the abuse of elderly people suffering from dementia or senile dementia by those aiming to gain financial gain at their expense. A guardianship power of attorney would make it possible to reconcile the already mentioned issues relating to the right to self-determination and decision-making over one's personal life with the need to limit decision-making autonomy for legitimate reasons, in the best interests of the principal. The above entitles one to postulate the unification and expansion of existing legal regulations, which should provide for legal instruments adapted to real social needs. It is therefore justified to postulate *de lege ferenda* introduction into the Polish legal system of the institution of a guardianship power of attorney, which will fill a gap in the law and make it reasonably possible to protect the right of elderly persons to have their decision-making autonomy respected.

References

Boratyńska, M. (2014). Autonomia pacjenta a granice upoważnienia osoby bliskiej i zaufanej [Patient autonomy and the limits of the authorisation of a close and trusted person]. *Prawo i Medycyna*, *1*, 61–85.

Bürgerliches Gesetzbuch [*Kodeks cywilny*]. Retrieved 10.01.2024 from: https://www.gesetze–im–internet.de/bgb/.

Budzianowska, J. (2000). Odmowa dokonania czynności notarialnej [Refusal to perform a notarial act]. *Nowy Przegląd Notarialny*, *1*, 44–63.

Fiutak, A. (2019). *Prawo w medycynie* [Law in medicine]. Warszawa: C. H. Beck.

Główny Urząd Statystyczny. (2022). *Sytuacja osób starszych w Polsce w 2021 r. Analizy statystyczne* [The situation of the elderly in Poland in 2021. Statistical analysis]. Warszawa – Białystok: Główny Urząd Statystyczny, Urząd Statystyczny w Białymstoku.

Gniewek, E. (2000). O potrzebie szczególnej ostrożności notariusza przy dokonywaniu czynności z udziałem osób starszych [On the need for the notary to be particularly cautious when dealing with the elderly]. *Rejent*, *10(5)*, 210–217.

Gniewek, E., Machnikowski, P. (2021). *Kodeks cywilny: Komentarz* [Civil Code: Commentary]. Warszawa: C. H. Beck.

Grzejszczak, R., Szeroczyńska, M. (2012). Ubezwłasnowolnienie i inne formy wsparcia dla osób z niepełnosprawnością intelektualną w Polsce – teoria i praktyka [Incapacitation and other forms of support for people with intellectual disabilities in Poland – theory and practice]. In: K. Kędziora (Ed.), *Jeśli nie ubezwłasnowolnienie, to co?: Prawne formy wsparcia osób z niepełnosprawnością intelektualną* (pp. 63–106). Warszawa: Polskie Towarzystwo Prawa Antydyskryminacyjnego.

Janiszewska, B. (2017). Skutki ustanowienia kuratora dla osoby niepełnosprawnej [Effects of the appointment of a guardian for a disabled person]. *Monitor Prawniczy*, *25*(*11)*, 607–611.

Karkowska, D. (2016). *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta: Komentarz, wyd. III* [Act on Patients' Rights and Patients' Ombudsman: Commentary, 3rd ed]. Retrieved from: https://sip.lex.pl/komentarze–i–publikacje/komentarze/ustawa–o–prawach–pacjenta–i–rzeczniku–praw–pacjenta–komentarz–wyd–587281093.

Kleniewska, I., Szeroczyńska, M. (2012). Założenia uregulowania w polskim prawie instytucji asystenta prawnego osoby z niepełnosprawnością intelektualną lub psychospołeczną [Assumptions for regulating the institution of a legal assistant for a person with intellectual or psychosocial disabilities in Polish law]. In: K. Kędziora (Ed.), *Jeśli nie ubezwłasnowolnienie, to co?: Prawne formy wsparcia osób z niepełnosprawnością intelektualną* (pp. 107–134). Warszawa: Polskie Towarzystwo Prawa Antydyskryminacyjnego.

Kociucki, L. (2012). Komentarz 1 [Commentary 1]. In: K. Kędziora (Ed.), *Jeśli nie ubezwłasnowolnienie, to co?: Prawne formy wsparcia osób z niepełnosprawnością intelektualną* (pp. 135–156). Warszawa: Polskie Towarzystwo Prawa Antydyskryminacyjnego.

Kociucki, L. (2013). Niektóre problemy nowelizacji polskiego prawa o ubezwłasnowolnieniu [Some problems of the amendment of the Polish law on incapacitation]. *Studia Prawnicze*, *2(194)*, 103–122. DOI: 10.37232/sp.2013.2.6.

Konwencja o Prawach Osób Niepełnosprawnych, sporządzona w Nowym Jorku dnia 13 grudnia 2006 r [Convention on the Rights of Persons with Disabilities, prepared at New York on 13 December 2006]. (2012). Dz. U. 2012.1169.

Krajowa Rada Notarialna [National Council of Notaries]. (2019). Retrieved from: https://bip.brpo.gov.pl/sites/default/files/Odpowied%C5%BA%20Krajowej%20Rady%20Notarialnej%2029.01.2019.pdf.

Machnikowski, P. (2016). Pełnomocnictwo opiekuńcze w pracach Komisji Kodyfikacyjnej Prawa Cywilnego w latach 2012–2015 [Guardianship power of attorney in the work of the Civil Law Codification Commission 2012-2015]. *Rejent*, *26(5)*, 50–59.

Nowocień, M. (2013). Nieświadomość jako przyczyna odmowy dokonania czynności notarialnej [Unconsciousness as a reason for refusing to perform a notarial act]. *Monitor Prawniczy*, *21(24)*, 1300–1306.

Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 28 października 2022 r. w sprawie ogłoszenia jednolitego tekstu ustawy Prawo bankowe [Announcement by the Speaker of the Sejm of the Republic of Poland of 28 October 2022 on the announcement of the consolidated text of the Banking Law Act]. (2022). Dz. U. 2022.2324.

Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 25 maja 2023 r. w sprawie ogłoszenia jednolitego tekstu ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych [Announcement by the Speaker of the Sejm of the Republic of Poland of 25 May 2023 on the announcement of the consolidated text of the Act on pensions from the Social Insurance Fund]. (2023). Dz. U. 2023.1251.

Obwieszczenie Ministra Zdrowia z dnia 1 sierpnia 2022 r. w sprawie ogłoszenia jednolitego tekstu rozporządzenia Ministra Zdrowia w sprawie kierowania do zakładów opiekuńczo–leczniczych i pielęgnacyjno–opiekuńczych [Announcement by the Minister of Health of 1 August 2022 on the publication of the consolidated text of the Regulation of the Minister of Health on referral to care and treatment facilities and nursing care facilities]. (2022). Dz. U. 2022.1755.

Olczak-Dąbrowska, D. (2014). Wybrane rodzaje kurateli w praktyce sądowej [Selected types of guardianship in court practice]. *Prawo w działaniu. Sprawy cywilne*, *17*, 89–143.

Osajda, K., Borysiak, W. (Eds.). (2023). *Kodeks cywilny: Komentarz* [Civil Code: Commentary]. Warszawa: Legalis.

Pogłódek, A., Mostowik, P. (2018). *Oświadczenia na wypadek przyszłego leczenia (dyspozycje pro futuro) w Kanadzie i Stanach Zjednoczonych Ameryki – ujęcie prawnoporównawcze z perspektywy Polski* [Statements in case of future medical treatment (pro futuro dispositions) in Canada and the United States of America – a legal comparative approach from a Polish perspective]. Warszawa: Instytut Wymiaru Sprawiedliwości.

Postanowienie Sądu Najwyższego z dnia 30 kwietnia 1976 r. [Order of the Supreme Court of 30 April 1976.]. (1976). III CRN 25/76. OSPiKA.1977/4/78.

Postanowienie Sądu Najwyższego z dnia 24 maja 1995 r. [Order of the Supreme Court of 24 May 1995]. (1995). III CRN 22/95. OSNC 1995/9/134.

Postanowienie Sądu Najwyższego z dnia 14 czerwca 2005 r. [Order of the Supreme Court of 14 June 2005]. (2005). V CK 691/04.

Postanowienie Sądu Najwyższego – Izba Cywilna z dnia 29 lipca 2015 r. [Order of the Supreme Court – Civil Chamber of 29 July 2015]. (2015). II CSK 854/14.

Postanowienie Sądu Najwyższego z dnia 8 grudnia 2016 r. [Order of the Supreme Court of 8 December 2016]. (2016). III CZ 54/16.

Projekt ustawy o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw. UD 395. Serwis Rzeczypospolitej Polskiej [Draft Act on amending the Act – Civil Code and some other acts. UD 395 Service of the Republic of Poland.]. Retrieved 01.09.2023 from: https://www.gov.pl/web/premier/projekt–ustawy–o–zmianie–ustawy—kodeks–cywilny–oraz–niektorych–innych–ustaw.

Radwański, Z. (2008). *System Prawa Prywatnego: tom 2: Prawo cywilne: Część ogólna* [System of Private Law: vol. 2: Civil Law: General Part]. Warszawa: C. H. Beck.

Rozporządzenie Ministra Zdrowia z dnia 25 czerwca 2012 r. w sprawie kierowania do zakładów opiekuńczo-leczniczych i pielęgnacyjno-opiekuńczych [Ordinance of the Minister of Health of 25 June 2012 on referral to care and treatment facilities and nursing care facilities]. (2012). Dz. U. 2012.731.

Rożdżeński, W. (2021). Wykorzystanie instytucji kurateli dla osoby niepełnosprawnej dla realizowania czynności właściwych pełnomocnictwu zdrowotnemu [Use of the institution of guardianship for a disabled person for the implementation of actions appropriate to a health power of attorney]. *Przegląd Prawa Medycznego*, *3(1–2)*, 121–169.

Safjan, M., Bosek, L. (Eds.). (2016). *Konstytucja RP: tom I: Komentarz do art. 1–86* [Constitution of the Republic of Poland: Volume I: Commentary on Articles 1–86]. Warszawa: C. H. Beck.

Słyk, J. (2019). Orzekanie w sprawach dotyczących umieszczenia pacjenta w zakładzie opiekuńczo-leczniczym [Adjudication of cases concerning the placement of a patient in a care and treatment facility]. *Prawo w Działaniu*. *Sprawy cywilne*, *40*, 79–122. DOI: 10.32041/pwd.4003.

Szeroczyńska, M. (2013). Dopuszczalność uprzednich oświadczeń pacjenta i pełnomocnictwa medycznego de lege lata i de lege ferenda [Admissibility of prior

patient statements and medical power of attorney de lege lata and de lege ferenda]. In: A. Kübler, I. Chęciński (Eds.), *Dylematy medyczne i prawne: Intensywna terapia bezpieczna dla lekarza i pacjenta.* (pp. 77 – 90). Wrocław: Wrocławskie Wydawnictwo Naukowe Atla 2.

Tworkowska-Baraniuk, A. (2016). Realizacja idei praw człowieka wobec ludzi starych [Realising the human rights of the elderly]. In: M. Halicka, J. Halicki, & E. Kramkowska (Eds.), *Starość: Poznać, przeżyć, zrozumieć* (pp. 165–174). Białystok: Wydawnictwo Uniwersytetu w Białymstoku.

Uchwała składu 7 sędziów Sądu Najwyższego z dnia 12 grudnia 1960 r. [Resolution of a panel of seven judges of the Supreme Court of 12 December 1960]. (1960). I CO 25/60. OSN.1961/2/32.

Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy [Act of 25 February 1964. Family and Guardianship Code]. (1964a). Dz. U. 2020.1359.

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny [Act of 23 April 1964. Civil Code]. (1964b). Dz. U. 2023.1610.

Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie [Act of 14 February 199. Law on notaries public]. (1991). Dz. U. 2022.1799.

Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego [Act of 19 August 1994 on the protection of mental health]. (1994). Dz. U. 2022.2123.

Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty [Act of 5 December 1996 on the professions of physician and dentist]. (1996). Dz. U. 2023.1516.

Ustawa z dnia 2 kwietnia 1997 r. Konstytucja Rzeczpospolitej Polskiej [Act of 2 April 1997 Constitution of the Republic of Poland]. (1997a). Dz. U. 1997.78.483.

Ustawa z dnia 6 czerwca 1997 r. Kodeks karny [Act of 6 June 1997. Criminal Code]. (1997b). Dz. U. 1997.88.553.

Ustawa z dnia 29 sierpnia 1997 r. Prawo bankowe [Act of 29 August 1997. Banking law]. (1997c). Dz. U. 1997.140.939.

Ustawa z dnia 17 grudnia 1998 r. o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych [Act of 17 December 1998 on pensions from the Social Insurance Fund]. (1998). Dz. U. 1998.162.1118.

Ustawa z dnia 6 listopada 2008 r. o prawach pacjenta i Rzeczniku Praw Pacjenta [Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman]. (2008). Dz. U. 2023.1545 z późn. zm.

Ustawa z dnia 28 lipca 2023 r. o zmianie ustawy Kodeks rodzinny i opiekuńczy oraz niektórych innych ustaw [Act of 28 July 2023 amending the Family and Guardianship Code Act and certain other acts]. (2023). Dz. U. 2023.1606.

Wajdzik, J. (2011). Brak świadomości albo swobody jako wada oświadczenia woli [Lack of awareness or freedom as a defect in the declaration of intent]. *Edukacja Prawnicza*, *3*, 19–20.

Wilkowska-Płóciennik, A., Szereda A. J., & Beger-Smurzyński, K. (2020). *Otępienie (demencja) – problemy prawne* [Dementia (dementia) – legal issues]. Biuletyn RPO. Warszawa: Biuro Rzecznika Praw Obywatelskich.

Wyrok Sądu Apelacyjnego w Białymstoku z dnia 15 października 2015 r. [Judgment of the Court of Appeal in Białystok of 15 October 2015]. (2015). I ACa 491/15.

Wyrok Sądu Apelacyjnego w Białymstoku z dnia 7 grudnia 2018 r. [Judgment of the Court of Appeal in Białystok of 7 December 2018]. (2018). I ACa 650/18.

Wyrok Sądu Apelacyjnego w Szczecinie z dnia 28 marca 2019 r. [Judgment of the Court of Appeal in Szczecin of 28 March 2019]. (2019). I ACa 612.

Wyrok Sądu Najwyższego z dnia 23 września 1999 r. [Judgment of the Supreme Court of 23 September 1999]. (1999). II UKN 131/99. OSNP 2001/77.

Wyrok Sądu Najwyższego z dnia 7 lutego 2006 r. [Judgment of the Supreme Court of 7 February 2006]. (2006). IV CSK 7/05. LEX nr 180191.

Wyrok Sądu Najwyższego z dnia 4 stycznia 2007 r. [Judgment of the Supreme Court of 4 January 2007]. (2007). V CSK 396/06. *Biuletyn SN 4/2007*.

Wyrok Trybunału Konstytucyjnego z dnia 4 kwietnia 2001 r. [Judgment of the Constitutional Court of 4 April 2001]. (2001). K. 11/2000. Dz. U. 2001.32.386.

Wyrok Trybunału Konstytucyjnego z dnia 7 marca 2007 r. [Judgment of the Constitutional Court of 7 March 2007]. (2007). K 28/05. OTK 2007.3A.24.

Wyrok Trybunału Konstytucyjnego z dnia 9 lipca 2009 r. [Judgment of the Constitutional Court of 9 July 2009]. (2009). SK 48/05. OTK–A 2009.7.108.

Zajdel-Całkowska, J. (2021). Zgoda pacjenta na udzielenie świadczenia zdrowotnego i sprzeciw wobec niego [Patient consent and objection to the provision of health care]. In: J. Zajdel-Całkowska (Ed.), *Prawo medyczne w ochronie zdrowia*. (pp. 17–92). Warszawa: Wolters Kluwer.

Załucki, M. (Ed.) (2023). *Kodeks cywilny: Komentarz* [Civil Code: Commentary]. Warszawa: C. H. Beck.

Zastąpienie ubezwłasnowolnienia systemem wspieranego podejmowania decyzji. 10 lat Konwencji o prawach osób niepełnosprawnych w Polsce [Replacing incapacitation with a system of supported decision-making. 10 years of the Convention on the Rights of Persons with Disabilities in Poland]. (2022). Retrieved from: https://bip.brpo.gov.pl/pl/content/ubezwlasnowolnienie–system–wspieranego–podejmowania–decyzji–10–lat–kpon.

Zurzycka, P., Radzik, T. (2015). Autonomia decyzji pacjenta cierpiącego na zaburzenia otępienne – zarys problematyki [Decision autonomy of the patient suffering from dementia disorders – an overview of the issues. *Problemy Pielęgniarstwa*, *23(2)*, 269–273. DOI: 10.5603/PP.2015.0045.