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PERMISSIBILITY OF A POWER OF ATTORNEY IN THE EVENT OF A LACK OF CAPACITY TO CONSENT

1. INTRODUCTORY REMARKS

Power of attorney is an instrument that enables the granting of so-called "*pro futuro* declarations", that is patients' expressions of will made in the event of an inability to assess reality and make a decision unassisted[1]. "Medical powers of attorney"[2] are referred to, alongside living wills, trusted persons and advance directives for incapacity (*declarations anticipées*) as *pro futuro* declarations of the IV generation[3]. It allows a proxy to make decisions related to medical treatment where the represented person is not capable of deciding for themselves. Suitable legal devices exist in, *inter alia*, England and Wales (lasting powers of attorney) pursuant to the Mental Capacity Act 2005[4], and Switzerland, under the Swiss Civil Code[5]. Most U.S. states have also adopted it in one way or another. Whilst in some, e.g. Massachusetts, Michigan and New York, merely healthcare proxies are available, in others, except Alaska, a patient may leave a living will and issue a power of attorney[6].

The paper discusses the regulations of the Council of Europe concerning medical powers of attorney. Permissibility of such powers of attorney under Polish law will also be considered. It is worth pondering whether a medical power

[1] M. Safjan, *Prawo i medycyna: ochrona praw jednostki a dylematy współczesnej medycyny*, Warszawa 1998, p. 44; P. Sobolewski, *Zgoda na zabieg medyczny*, Warszawa 2009, unpublished, available at the Library of the Faculty of Law and Administration, University of Warsaw, p. 186; M. Syska, *Medyczne oświadczenia pro futuro na tle prawnoporównawczym*, Warszawa 2013, p. 33; M. Świderska, *Zgoda pacjenta na zabieg medyczny*, Toruń 2007, p. 209.

[2] For the purposes of the paper, the terms "proxy" and "power of attorney" are used interchangeably.

[3] C. Y. Hong, L. G. Goh, H. P. Lee, *The advance directive – a review*, "Singapore Medical Journal" 1996, Vol. 37, p. 414, citing after M. Syska, *Medyczne oświadczenia pro futuro*..., p. 37.

[4] http://www.legislation.gov.uk/ukpga/2005/9/contents (accessed 1 May 2017).

[5] https://www.admin.ch/opc/de/classified-compilation/21.html#21 (accessed 1 May 2017).

[6] M. Szeroczyńska, *Eutanazja i wspomagane samobójstwo na świecie. Studium prawnoporównawcze*, Kraków 2004, p. 301.

of attorney is capable of functioning within the boundaries laid down under the current regulatory regime or whether new agency provisions are necessary.

2. THE COUNCIL OF EUROPE STANDARD

The European system of human rights, subsisting primarily under the auspices of the Council of Europe, is one of the most developed in the world. A bioethical debate has escalated within the organization along with the dramatic advancement of medicine.

The European Convention of Human Rights does not explicitly refer to *pro futuro* declarations. However, it does include a number of provisions from which support for such manifestations of individual autonomy may be derived. Several rights resident within the Convention are of significance to bioethical questions: the right to life, prohibition on inhuman treatment, the right to freedom and personal safety and the right to respect for private and family life. These stipulations have formed the foundation for the case law of the European Court of Human Rights on the rights of patients[7]. Judgments in cases such as *Herczegfalvy v Austria*[8], *Y.F. v Turkey*[9], *Glass v United Kingdom*[10] and *Nevmerzhitsky v Ukraine*[11] prove that domestic regulations pertaining to patient consent may be the subject of the Court's scrutiny.

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine[12] is by far the most important legal enactment of the Council of Europe on the subject. It has a framework character and as such may be supplemented with additional protocols. Its ambit covers regulations on the classic question of patient consent, but also encompasses some specific medical interventions (like transplantation) and medical research.

The European Bioethics Convention marked the first time an act of international law demanded that *pro futuro* declarations with regard to medical interventions be taken into account[13]. Article 9 of the Oviedo Convention stipulates that any previously expressed wishes relating to a medical intervention by a patient

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[7] J. Bujny, *Prawa pacjenta*, *między autonomią a paternalizmem*, Warszawa 2007, p. 52: M. Grzymkowska, *Standardy bioetyczne w prawie europejskim*, Warszawa 2009, p. 162.

[8] Application No. 10533/83, judgment of 24 September 1992.

[9] Application No. 24209/94, judgment of 22 July 2003.

[10] Application No. 61827/00, judgment of 9 March 2004.

[11] Application No. 54825/00, judgment of 5 April 2005.

[12] Also known as the European Bioethics Convention or the Oviedo Convention.

[13] M. Śliwka, *Testament życia i inne oświadczenia pro futuro – przyczynek do dyskusji*, Polish Bioethics Association: Debate: Around the Living Will, text in Polish available at http://www.ptb.

who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account.

A previously expressed wish in respect of a medical intervention may constitute consent or its refusal.

The phrasing "shall be taken into account" holds tremendous weight as regards establishing the true consequences of this provision of the Oviedo Convention and, potentially, giving it absolute effect. L. Kubicki has noted that "shall be taken into account" connotes an obligation to honour a pertinent declaration of will and not that it should merely be considered[14].

The Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine expressed a sentiment that previously expressed wishes need not be binding for doctors, for example where there is a significant time lapse between a declaration of will and a given medical intervention. It is possible that in the intervening time medicine has progressed so that it is reasonable to suppose the patient could have made a different decision had he been aware of it. The doctor should, at any time, if possible, make sure the patient's wishes relate to their current situation and that they still hold[15].

M. Safjan and K. Zaradkiewicz believe that patient wishes and preferences are not binding for doctors and that they constitute an indicator of the desirability of a medical intervention[16]. This view is shared by L. Bosek and P. Sobolewski[17].

It should be noted that Article 9 of the Oviedo Convention is, in general, quite moderate in its wording. It does not express a preference towards any of the constituents of the IV generation of *pro futuro* declarations. Therefore, consistent therewith are the French model (which introduces the institution of a trusted person), the English regulation (lasting powers of attorney) or the Belgian system with its *declarations anticipées*.

In addition, I should mention the Recommendation of the Committee of Ministers of the Council of Europe of 9 December 2009 (CM/Rec(2009)11) which describes the principles concerning continuing powers of attorney and advance directives for incapacity. The document recommends wider usage of *pro futuro* declarations, however it leaves all detailed and specific issues to domestic reg-

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org.pl/pdf/sliwka_testament_1.pdf (accessed 19 May 2017); M. Syska, *Medyczne oświadczenia pro futuro*..., p. 68.

[14] L. Kubicki, *Sumienie lekarza jako kategoria prawna*, "Prawo i Medycyna" 1999, issue 4, p. 10.

[15] https://rm.coe.int/16800ccde5 (accessed 5 May 2017).

[16] M. Safjan, K. Zaradkiewicz, *Zgoda na interwencję medyczną w świetle konwencji Rady Europy o prawach człowieka i biomedycynie*, (in:) A. Dębiński, W. Bar, P. Stanisz (eds.), *Divina et humana. Księga jubileuszowa w 65 rocznicę urodzin księdza profesora Henryka Misztala*, Lublin 2001, p. 216.

[17] L. Bosek, P. Sobolewski, *Oświadczenia na wypadek utraty zdolności do wyrażenia zgody na zabieg medyczny*, "Studia Prawa Prywatnego" 2015, issues 3 and 4, p. 9.

ulation. States should determine the extent to which *pro futuro* declarations are binding and create legal solutions applicable in the event that a significant change of circumstances occurs between the expression of a wish and the undertaking of a medical intervention. A healthcare proxy shall act in consonance with the terms of their power of attorney, taking into account any wishes of the granter expressed beforehand, and should be guided by the best interests of the patient. Also, a controlling mechanism was proposed in the form of, for instance, a supervisor appointed by the granter to oversee the conduct of the proxy, or according appropriate rights to the state.

An analysis of *pro futuro* declarations within the Council of Europe legal system would not be complete without mentioning another instrument of soft law, i.e. Resolution 1859 (2012) of the Parliamentary Assembly of the Council of Europe of 25 January 2012 on protecting human rights and dignity by taking into account previously expressed wishes of patients. Therein it was stated that Article 9 of the Oviedo Convention may be given effect in a number of ways: by instituting a proxy, completing a living will or expressing advance directives for incapacity.

3. PERMISSIBILITY OF GRANTING A POWER OF ATTORNEY TO CONSENT TO A MEDICAL INTERVENTION UNDER POLISH LAW

As there is no specialized regulation of *pro futuro* declarations in Polish law, it may be asked whether the existing provisions concerning representation are capable of accommodating this peculiar legal category.

Polish law, just as Ukrainian law, does not recognize the *common law* principle under which a power of attorney expires once the granter loses their capacity to make autonomous decisions[18].

Whilst the concept of a power of attorney granted by a person capable of consenting to a medical intervention has not been examined in the Polish literature, some academic ink has been spilt on the issue of medical powers of attorney as one type of declarations made in the event of a loss of capacity to consent. The issue is commonly located within the "*pro futuro* declarations" discussion and is a rather novel one in the circle of Polish legal academics. However, the power of attorney as one instrument for effecting such declarations has not been the subject of much attention, with most writers merely mentioning

[18] R. Citowicz, *Spory wokół testamentu życia*, "Państwo i Prawo" 2007, issue 1, p. 43.

it in passing, in the context of describing declarations in the event of a loss of capacity to consent[19].

R. Citowicz has argued that Polish civil law does not pose any obstacles to granting such powers of attorney, emphasizing that it "would not expire by virtue of law should the granter lose their capacity to make decisions or even become incapacitated (Article 101 § 2 of the Civil Code *a contrario*)[20]. L. Bosek and P. Sobolewski hold that granting a power of attorney to decide on medical treatment in the event of the granter's loss of capacity to consent is impermissible *de lege lata* as Polish law does not envisage the possibility of issuing such powers of attorney[21]. M. Syska has echoed the conclusion, pointing out the wholeness of the legislation governing the medical profession[22]. According to J. Haberko, the fact that civil law empowers agents to grant powers of attorney cannot be transposed without adjustments and modifications onto the relations between a medical professional and a patient[23].

The crux of the debate is the correct interpretation of Article 95 § 1 of the Civil Code, under which, subject to exceptions provided for by statute or resulting from the nature of a juridical act, a juridical act may be carried out through a representative.

One such exception is issuance and revocation of a will (Article 944 § 2 of the Code).

To reach comprehensive corollaries an analysis of the exact breadth of Article 95 § 1 of the Civil Code must be undertaken.

Accordingly, B. Walaszek argued that it is impossible to issue a declaration of paternity through a representative[24]; the same applies to consent to adoption[25], whilst one could use a representative to accept or reject the duties of a testamentary executor[26].

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[19] T. Wiwatowski, U. Chmielewska, A. Karnas, *Prawo wyboru metody leczenia – stanowisko świadków Jehowy w sprawie transfuzji krwi*, "Prawo i Medycyna" 1999, issue 8; P. Sobolewski, *Zgoda na zabieg medyczny*...; M. Syska, *Medyczne oświadczenia pro futuro*...; L. Bosek P. Sobolewski, *Oświadczenia na wypadek*...; R. Citowicz, *Spory*...

[20] R. Citowicz, *Spory*..., p. 43.

[21] L. Bosek P. Sobolewski, *Oświadczenia na wypadek*..., pp. 8–9.

[22] M. Syska, *Medyczne oświadczenia pro futuro*..., pp. 275–276.

[23] J. Haberko, (in:) L. Kondratiew-Bryzik, K. Sękowska-Kozłowska (eds.), *Prawa człowieka wobec rozwoju biotechnologii*, Warszawa 2013, p. 144.

[24] B. Walaszek, *Uznanie dziecka w polskim prawie rodzinnym*, Kraków 1958, pp. 56–57.

[25] B. Walaszek, *Przysposobienie w polskim prawie rodzinnym oraz polskim prawie międzynarodowym i procesowym*, Warszawa 1966, p. 152.

[26] B. Walaszek, *Stanowisko prawne wykonawcy testamentu*, "Nowe Prawo" 1959, issue 4, p. 440.

M. Pazdan accepts proxies as regards partners of a civil law partnership[27] but rejects them in cases of clemency[28]. Expressions of emotions, he has stated, cannot form the object of a power of attorney[29].

M. Gocłowski has asserted that a representative may, on behalf of their principal, make a declaration on escaping the legal consequences of an error being a defect in consent[30].

E. Mazur believes a declaration on instituting a foundation may be effectively made by a representative[31].

A representative cannot acknowledge paternity nor perform any of the acts prescribed in Articles 899 § 1, 930 and 1010 § 1 of the Code, writes J. Strzebinczyk[32].

P. Sobolewski, in turn, has insisted that clemency cannot be granted by a representative so long as it is agreed that it constitutes a legal act[33]. The view is shared by W. Robaczyński[34] and J. Mucha-Kujawa[35].

S. Rudnicki has commented more broadly that it must be impermissible to use a representative to make declarations of will in family status cases: annulment of an acknowledgement of paternity, denial of paternity, entering into and annulment of marriage (subject to Article 6 of the Family and Guardianship Code)[36]. K. Kopaczyńska-Pieczniak agrees with this perspective[37].

The Polish Supreme Court in its resolution of 13 May 2015 (ref. number III CZP 19/15) opined that the legal representative of a minor may grant a power

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[27] M. Pazdan, *Pełnomocnik wspólnika lub wspólników spółki cywilnej*, (in:) *Księga pamiątkowa dla uczczenia pracy naukowej Profesora Kazimierza Kruczalaka*, "Gdańskie Studia Prawnicze" 1999, Vol. V, p. 327; to the same effect: judgment of the Supreme Court of 29 June 2000, ref. number V CKN 552/00, Lex No. 52492.

[28] M. Pazdan, (in:) K. Pietrzykowski (ed.), *Kodeks cywilny. Komentarz do art. 1–449[10]*, Warszawa 2011, p. 459.

[29] *Ibidem*.

[30] M. Gocłowski, *Pełnomocnictwo – przegląd orzecznictwa Sądu Najwyższego za lata 1989–2003*, "Przegląd Prawa Handlowego" 2003, issue, 11, p. 42; to the same effect: judgment of the Supreme Court of 24 April 2002, ref. number IV CKN 998/00, Lex No. 55495.

[31] E. Mazur, *Fundacja*, "Palestra" 1991, issue 5–7, p. 47; to the same effect: resolution of the Supreme Court of 8 December 1992, ref. number I CRN 182/92, Lex No. 3886.

[32] J. Strzebinczyk, (in:) E. Gniewek, P. Machnikowski (eds.), *Kodeks cywilny. Komentarz*, Warszawa 2014, p. 246.

[33] P. Sobolewski, (in:) K. Osajda (ed.), *Kodeks cywilny. Komentarz. Tom 1. Przepisy wprowadzające. Część ogólna. Własność i inne prawa rzeczowe*, Warszawa 2013, p. 787.

[34] W. Robaczyński, (in:) M. Pyziak-Szafnicka, P. Księżak (eds.), *Kodeks cywilny. Część ogólna*, Warszawa 2014, p. 1086.

[35] J. Mucha-Kujawa, *Teoretycznoprawne aspekty przedstawicielstwa podmiotów prywatnych*, "Studia Prawnicze" 2013, Vol. 4, issue 196, p. 82.

[36] S. Rudnicki, (in:) J. Gudowski (ed.), *Kodeks cywilny. Komentarz. Część ogólna*, t. I, Warszawa 2014, p. 723.

[37] K. Kopaczyńska-Pieczniak, (in:) A. Kidyba (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2012, p. 599.

of attorney to consent to a serious medical intervention under Article 34(3) of the Act of 5 December 1996 on Medical and Dentist Professions[38].

In the judgment of 29 June 2000 (ref. number V CKN 52/00) the Court held that "each partner of a civil law partnership may institute a proxy, whose powers, however, cannot exceed his own".

Further, the Court has proclaimed that "a declaration on escaping the legal consequences of a declaration of will made to another under an error may be issued by a representative. No prohibition in this respect is prescribed by statute, nor does it stem from the nature of the legal act of escaping the legal consequences of a declaration of will" (judgment of 24 April 2002, ref. number IV CKN 998/00).

One cannot consent to adoption nor demand adoption through a representative[39]. In the resolution of the Supreme Court of 17 June 1983 (ref. number IV CR 245/83) it was held that "consent to adoption is shaped in the Family and Guardianship Code as a personal right of the parents".

The Warsaw Appellate Court in the resolution of 17 October 2000 (ref. number I Aca 119/00) held that issuance of a declaration pertaining to the establishment of an association does not require personal action. The Court went on to say that "the provisions of the Act of 7 April 1989 – Law of Associations, applicable in the immediate case, do not envisage any of the exceptions featured in Article 95 of the Civil Code. It is also not correct to say a declaration on the establishment of an association, by virtue of the nature of the legal act, may not be issued by a representative, i.e. that it is of a strictly personal character, as it is the case with family status cases where certain exceptions do apply".

I have not found any academic comments on the permissibility of proxies as regards the exercise of parenthood rights, of which custody of a child is an important aspect.

Acts that cannot be performed by a representative are referred to by academic writers as personal[40] or strictly personal[41].

Several commentators have attacked the concept of "nature of a legal act". M. Smyk has proposed dispensing with the term altogether when assessing the permissibility of acting through an attorney. He also advocates repealing Article

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[38] Case comments: Z. Jancewicz, *Glosa do uchwały Sądu Najwyższego z dnia 13 maja 2015 r.*, *III CZP 19/15*, "Roczniki Nauk Prawnych" 2015, Vol. XXV, issue 4, pp. 187–197; B. Janiszewska, *Pełnomocnictwo do wyrażenia zgody na udzielenie świadczenia zdrowotnego*, "Monitor Prawniczy" 2015, issue 15, pp. 819–822; A. Kallaus, *Glosa do uchwały Sądu Najwyższego z dnia 13.05.2015 r.*, *sygn. III CZP 19/15*, "Prawo i Medycyna" 2015, issue 4, pp. 124–131, notes; L. L. Bosek P. Sobolewski, *Oświadczenia na wypadek*..., p. 8.

[39] Resolution of the Supreme Court of 17 June 1983, ref. number IV CR 245/83, OSNC 1984, No. 5, item 73.

[40] K. Kopaczyńska-Pieczniak, (in:) A. Kidyba (ed.), *Kodeks cywilny*..., p. 599; J. Strzebinczyk, (in:) E. Gniewek, P. Machnikowski (eds.), *Kodeks cywilny*…, p. 246.

[41] S. Rudnicki, (in:) J. Gudowski (ed.), *Kodeks cywilny*..., p. 723.

95 § 1 of the Civil Code, arguing that it is superfluous considering the applicable statutory limitations[42]. It is difficult to agree with this view as a rational legislator never furnishes concepts whose meaning is empty.

It is submitted that if the personal character of a legal act is constitutive thereof, the act cannot be performed by a representative. The position of the majority of academic writers and the courts appears to be that, to put it more broadly, legal acts of a personal character are not directly predicated upon the economic interest of the granter of a power of attorney. They belong to the group of non-property rights.

The provenance of the concept of power of attorney is of a property character[43].

Doubtless, application of laws concerning power of attorney to non-property relations is problematic. I wish to draw upon the following examples: difficulties with relating "ordinary management" to personal matters, lack of control over a representative's declarations, a possibility of instituting several proxies with identical powers (Article 107), substitute powers of attorney (Article 106), no requirement for a representative to have full capacity to enter into legal relations (Article 100), the right of a representative to conduct a legal act with themselves (Article 108 of the Civil Code).

Article 6 of the Family and Guardianship Code (*matrimonium per procura*) gives rise to similar dilemmas[44].

Consent to a medical intervention clearly belongs to non-property rights by virtue of its character and consequence in the form of a legalization of a violation of personal rights, ones most momentous for a person from the perspective of the legal system. Consequently, I submit that it should not be permissible to grant consent to a medical intervention through a representative.

4. PERMISSIBILITY OF GRANTING A POWER OF ATTORNEY TO CONSENT TO A MEDICAL INTERVENTION UNDER UKRAINIAN LAW – A MENTION

Similarly, the Ukrainian legislator has stopped short of instituting *pro futuro* declarations in any form in domestic law. Representation is regulated in Title XVII of the Ukrainian Civil Code. At the root of a power of attorney lies a trans-

[42] M. Smyk, *Pełnomocnictwo według kodeksu cywilnego*, Warszawa 2010, p. 265.

[43] W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2009, pp. 141–143.

[44] G. Jędrejek, *Kodeks rodzinny i opiekuńczy. Małżeństwo. Komentarz do art. 1–61⁶*, Warszawa 2013, p. 65; W. Borysiak, (in:) J. Wierciński (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2014, pp. 75–77.

action or a legal act (Article 237 § 1 – a representative has the right to conclude a transaction on behalf of another whom they represent). This is also evident by reference to the systematics of the Code which regulates legal acts and representation in the same chapter. Further, the Code distinctly states that an indirect representative (i.e. one who, despite acting in the interests of another, conducts a legal act or transaction in their own name) is not a representative within its meaning.

Under the Ukrainian Civil Code, representation may arise on the grounds of a contract, the law, and acts of a body of a legal person. Under Polish law, only the first two bases are present.

Article 238 envisages three circumstances where a representative is not authorized to act. First, a representative may be authorized to conclude only those transactions that the person who they represent has the right to conclude. Second, acting through a representative is permissible where the sheer content of the legal act in question points to such a conclusion. Whilst this is foreign to Polish law, it is a concept well documented in the German doctrine (so-called *gewillkürte Höchstpersönlichkeit*)[45]. Third, a representative may not conduct a legal act in the name of the represented person in their own interest or in the interest of another person they simultaneously represent.

Article 239 specifies that a transaction concluded by a representative shall establish, change or terminate civil rights and obligations of the person whom they represent. No comparable provision exists in Polish law, however this appears to stem from the essence of representation.

Ukrainian regulations of representation are not suited to performing non-property legal acts. The Polish and Ukrainian provisions share the same source and are entrenched in the European legal tradition.

Direct representation did not develop in Roman law as most economic transactions were conducted by *alieni iuris* persons or slaves[46]. No one could act in the name of another (*nemo alieno onmine agree potest*)[47]. It was not until *ius gentium* that exceptions arose[48]. Initially, direct representation by a permanently appointed manager was permitted (*procurator omnium bonorum*). Subsequently, guardians were instituted[49]. Direct representation did not materialize before the Code of Justinian which envisaged ad hoc managers (*procurator unius rei*)[50]. T. Osuchowski has noted that in late Roman law it was permissible to conduct the following acts

[45] W. Flume, *Allgemeiner Teil des Bürgerlichen Rechts, Vol. II, Das Rechtsgeschäft*, Berlin–Hildelberg–New York 1979, p. 762; K. H. Schramm, (in:) *Münchener Kommentar zum Burgerlichen Gesetzbuch, Vol. I, Allgemeiner Teil*, Stuttgart–Berlin–Köln–Mainz 1967, p. 1398.

[46] A. Dębiński, *Rzymskie prawo prywatne. Kompendium*, Warszawa 2011, p. 162; M. Kuryłowicz, A. Wiliński, *Rzymskie prawo prywatne. Zarys wykładu*, Warszawa 2016, p. 121; K. Kolańczyk, *Prawo rzymskie*, Warszawa 2000, p. 219.

[47] W. Osuchowski, *Zarys rzymskiego prawa prywatnego*, Warszawa 1967, p. 271.

[48] R. Taubenschlag, *Prawo rzymskie na tle praw antycznych*, Warszawa 1955, p. 101.

[49] *Ibidem*.

[50] *Ibidem*.

through a representative: claiming possession of inheritance (*bonorum possessio*), running an enterprise (*institor*), claiming responsibility by ship operators (*receptum nautarum*)[51]. K. Kolańczyk has written about procurators who managed assets[52]. Further development of representation was confined to property rights[53].

In the light of the above, it appears that representation was born and evolved around property (or material) relations, therefore regulations pertaining thereto are not capable of accommodating non-property legal acts, including consent to medical treatment. Basing the healthcare power of attorney upon the general laws of representation is insufficient to guarantee adequate protection of values important for patients and ensure that they are provided with an appropriate level of care.

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Summary

The paper describes the regulations of the Council of Europe concerning medical powers of attorney and permissibility of such powers of attorney under Polish law. The author tries to consider whether a medical power of attorney is capable of functioning within the boundaries laid down under the current regulatory regime or whether new agency provisions are necessary. The paper discusses the interpretation of Article 95 § 1 of the Civil Code and the notion of "nature of a legal act". At the end of the article a reference is made to the European legal tradition as a common ground for Polish and Ukrainian law.

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[51] T. Osuchowski, *Rzymskie prawo prywatne. Zarys wykładu*, Warszawa 1981, pp. 209–210.

[52] K. Kolańczyk, *Prawo*...

[53] T. Giaro, (in:) W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie*..., pp. 141–143.

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KEYWORDS

power of attorney, medical law, medical consent, non-property rights, nature of a legal act

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pełnomocnictwo, prawo medyczne, zgoda na zabieg medyczny, prawa niemajątkowe, natura czynności prawnej