STANISŁAW CZEPITA

ON THE CONCEPT OF A CONVENTIONAL ACT AND ITS TYPES*

The conception of conventional acts is a permanent fixture in Polish law studies as far as both general theory of law and particular legal sciences are concerned. It was presented first by Zygmunt Ziembinski and his students, Leszek Nowak, Sławomira Wronkowska and Maciej Zieliński in the comprehensive article 'Czynności konwencjonalne w prawie.'[1] The original version of the conception was developed and modified by Zygmunt Ziembiński and Marek Zieliński,[2] as well as Tomasz Gizbert-Studnicki.[3] They enhanced it by relating it to the concept of speech acts discussed worldwide, in particular to the ideas of John L. Austin and his successors. In 1996—referring to the John R. Searle's ideas—the present author expanded the original conception by adding the conception of constitutive rules.[4] Important ideas on conventional acts were put forward by Wojciech Patryas in his monographs on legal norms and performatives in law.[5] This stage of conception development brought about a distinction between conventionalisation and formalisation; it was first presented at a conference in 2004 and published in the collective conference proceedings *Konwencjonalne i formalne aspekty prawa*.[6] The modifications of the conception against the background of its philosophical and methodological premises have recently been discussed by the present author in 'O koncepcji czynności konwencjonalnych w prawie.'[7] Reflection on the conception has posed certain questions and revealed some differences in the understanding of conventional acts. In the above-named publication, the present author has

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[1] L. Nowak et al., Czynności konwencjonalne w prawie, *Studia Prawnicze* 33(2), 1972: 73–99.

[2] Zob. M. Zieliński, Z. Ziembiński, *Uzasadnianie twierdzeń, ocen i norm w prawoznawstwie*, Warsaw, 1988: 60f.; Z. Ziembiński, M. Zieliński, *Dyrektywy i sposób ich wypowiadania*, Warsaw, 1992: 46f.

[3] T. Gizbert-Studnicki, O nieważnych czynnościach prawnych w świetle koncepcji czynności konwencjonalnych, Państwo i Prawo 30(4), 1975: 70–82.

[4] S. Czepita, *Reguły konstytutywne a zagadnienia prawoznawstwa*, Szczecin, 1996.

[5] W. Patryas, *Rozważania o normach prawnych*, Poznań, 2001; idem, *Performatywy w prawie*, Poznań, 2005.

[6] S. Czepita, Formalizacja i konwencjonalizacja działań w prawie, in: idem (ed.), *Konwencjonalne i formalne aspekty prawa*, Szczecin, 2006: 9–28 oraz inne artykuły zawarte w tej pracy zbiorowej.

[7] Idem, O koncepcji czynności konwencjonalnych w prawie, in: M. Smolak (ed.), *Wykładnia konstytucji. Aktualne problemy i tendencje*, Warsaw, 2016: 109–146.

advanced a specific version of the conception which he now believes—as to one of its aspects—to be incorrect. The purpose of this article above all therefore is to analyse the relations between the concept of conventional acts and that of signs, and between conventional acts and normative systems, in particular legal ones, and to distinguish types of conventional acts on account of this relation. The last-mentioned purpose, it should be noted, appears to be of particular interest to jurists.[8]

A model example of the conventional act is the behaviour of the man who, meeting a friend in the street, tips his hat to him/her, as opposed to the man who tips his hat, walking alone across a field. The latter is a natural act, that is, one that can be described by giving the physical and mental parameters of the behaviour of a given man (raising and then lowering of a hat), possibly taking into consideration the goal he wishes to achieve by behaving in this or that way, and understanding the connection between the behaviour and the goal (for example that he raised and then lowered his hat to cool his head). Whereas this description applied to the man who tips his hat meeting a friend in the street appears incomplete or absolutely wrong. This man does not so much raise and then lower his hat (although, no doubt, he does that)—let us call it act *C*—as he does something more, something else, something that no longer can be described by giving the physical and mental parameters of his behaviour, namely he performs the act of greeting a friend; let us call it act *cA*. To identify his behaviour *C* as greeting a friend (*cA*), it is necessary to invoke a rule saying that tipping a hat by *A* when he meets a friend is—in a given culture—considered a greeting or simply is a greeting, a rule—in this case—relying on the custom of connecting the view of a person tipping a hat when meeting a friend with the thought that the person has greeted a friend.

To generalise, it must be said that we are dealing with conventional act *cA* when in accordance with specific rules—known as the rules of sense of a conventional act—the performance of natural act *C* (or natural acts $C_1 \ldots C_n$) of a specific type by an appropriate person or persons in an appropriate situation is identified as the performance of conventional act *cA*. It is, admittedly, performed by executing natural act *C* (or natural acts $C_1 \ldots C_n$), but is not reducible to it (them).[9] The rules of sense of a conventional act permitting the identification of a natural act performed by an appropriate person in an appropriate manner and in an appropriate situation as a conventional act of a given type may rest on a custom prevailing in a given community, a clear

[8] The impact of the conception of conventional acts on particular fields of law studies is discussed in S. Czepita, Czynności konwencjonalne a proces prawotwórczy i rola Trybunału Konstytucyjnego, *Państwo i Prawo* 69(12), 2014: 3–19. A comparison of the conception of conventional acts, formulated in the Poznań–Szczecin School, with conceptions developed worldwide and concerned with similar issues, especially those formulated by J.L. Austin and J.R. Searle, is left out of the current article for editorial reasons.

[9] The rules of sense of a conventional act, which are treated here as rules of its identification, in the early years of the conception were treated as rules of explanation, that is, as giving an answer to the question why somebody performed a specific conventional act. Arguments against this understanding of rules of sense are given in S. Czepita, *Reguły*: 127–132.

agreement or an imperative prescription.[10] Without going into the complex question of the mode of existence of the rules of sense of conventional acts, let us only observe that they are cultural and social in nature. These rules are an element of non-material (symbolic) culture adopted in a given community. Their social nature is seen in the fact that a given rule of sense of a conventional act can function when the members of a given community identify a specific natural act as a conventional act of a given type. An ordered set of the rules of sense of conventional acts is referred to as a cultural system, while the community whose members are guided by these rules in their conduct is known as a cultural group or a cultural community. The boundaries of a cultural community are usually not sharp, because in any community there are members who know or accept most, but not all rules making up a given cultural system. Of course, a person may know the rules of sense of conventional acts adopted in a given cultural community, but does not observe them, for instance, a researcher who is not a Polynesian working on the culture of Polynesians.[11] Cultural systems as ones composed of rules of sense of conventional acts may be stratified, as it were. Namely, in a given cultural system, in the basic stratum, rules of sense provide the identification criteria of a conventional act of the *cA* type. At the same time, in the stratum superimposed so to speak over the first one additional rules of sense provide the criteria for identifying a conventional act of the *cA'* type, as somehow connected with the *cA* type or derived from it, supplementing, specifying but also modifying sometimes the catalogue of rules of sense referring to the act of the *cA* type. Reconstructing the complete catalogue of the rules of sense of the conventional acts of the *cA'* type therefore, we must take into account the catalogue of the rules of sense of *cA* type acts. If we approach the field of law as an element of culture adopted in a given community, especially a linguistic one, we will observe that such a situation arises in the case of conventional acts functioning in a legal system.

The act, through the execution of which a given conventional act is performed, is the material substrate (substrate, for short) of the conventional act. In the simplest cases, the substrate of a conventional act is formed out of an uncomplicated natural act, for instance, the act of tipping a hat, nodding one's head, of kicking a ball. The substrate of a conventional act may, however, be far more complex. For instance, the making of specific sounds may be the substrate of conventional act cA_1 of formulating a specific utterance in a given language as a conventional act of the first rank so to speak, while the act of formulating a linguistic utterance of an appropriate content—the material substrate of the conventional act of promising as conventional act cA_2 of the second rank, so to speak.[12] As Ziembiński succinctly expressed this:

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[10] L. Nowak et al., op. cit.: 79–80.

[11] Ibidem: 78f. Zob. także J. Kmita, *Z metodologicznych problemów interpretacji humanistycznej*, Warsaw, 1971: 34–39.

[12] The complexity of the substrate of a conventional act may manifest itself, besides its many strata, in its aggegateness, sequentiality and division into stages. For details see S. Czepita, O koncepcji: 118–120.

> a specific psychophysical act (or a simpler conventional act) performed in specific circumstances by a specific person must be considered a specific conventional act.[13]

Patryas, expanding the definition and explaining it in the language of classic logical calculus, says:

> The definition of a predicate referring to a conventional act contains in its definiens at least three conjunctively joined parts, each of which has one or more predicates. The first one defines the position of the subject. The second describes the situation in which the subject is. The third indicates a specific act. Hence, when the act is performed by a person of an appropriate position, being in a suitable situation, the act becomes an act denoted by the defined predicate. Thus, it takes on the characteristics of a conventional act.[14]

The difference between conventional act *cA* and act *C*, being its substrate, lies in a different name of a given type of a conventional act, a different person, at least potentially, to whom conventional act *cA* is assigned, in comparison to the person performing act *C*, and a difference (peculiarity) of the circumstances and manner of performance of act *C* so that it is identified as conventional act *cA*.

The first of the above requirements reflects the intuition that a conventional act must have a peculiar name in the sense that it cannot be identical with the name of act *C*, being the substrate of conventional act *cA*. We say that a person greeted somebody and not that he raised and then lowered his hat, a person agreed and not that he/she nodded his/her head, a person cast a vote and not that he/she dropped a piece of paper with a cross in the right place into an appropriate box. Although the requirement that a conventional act have a peculiar name, different from that of the act being its substrate, appears to be well-established, certain situations may raise doubts. Specifically, should the name of a conventional act sound different from the name of its substrate, with the names having different meanings or is it enough for the name of a conventional act to have a different meaning (and to what degree different) from the name of its substrate, even if the names sound identical. The last-named situations cause the line between a conventional act and its substrate to blur.

The second requirement is supposed to reflect the intuition that a conventional act may be assigned to an individual, a number of people or another entity, but in each case, the material substrate of a conventional act must be formed of, at the lowest level so to speak, a natural act by a human being or a complex of natural acts by various people.

The third requirement concerns the fact that natural act *C* is not identified as conventional act *cA* when it is performed in any situation and in any manner, but only when it is performed in such a situation and not other, and in such a manner, and not other. The raising of a hand is not identified as an act of voting, when the person raising a hand is walking alone across a field; the raising of a hand during voting but bent at the elbow at the right angle

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[13] Z. Ziembiński, W sprawie czynności konwencjonalnych, *Państwo i Prawo* 41(8), 1986: 105.
[14] W. Patryas, *Performatywy*: 28–29.

would cause doubts as to whether the person concerned is voting or is making strange movements or simply fooling around. A special aspect of the circumstances that must occur for a person's natural act to be identified as a conventional act of a given type concerns the mental state of the person performing this act. The decision whether such circumstances have occurred is of course incredibly difficult, but it is this aspect of the description of circumstances that is important in the analysis of declarations of will and acts in law.

Conventional acts in this meaning include playing patience, moving a knight in a game of chess, scoring a goal in a soccer match, a speech act (both a statement and an apology, promise or order), giving a greeting, casting a vote as well as more complex acts such as enacting a law, passing a judgment or entering into a contract. This broad category of conventional acts shall be called conventional acts in the broad sense of the term.

Since the beginning of the conception, a connection between the categories of conventional acts and signs has been noted. It has been observed that the connection can be seen in the fact that the substrate of a conventional act often takes the form of uttering or writing some words, hence making a linguistic sign.[15] The two categories have been described using symptomatic terminology: in both cases, rules have been mentioned connecting the noticing of a substrate—both of a conventional act and a sign—to thoughts of a specific content. To analyse the relation between the categories of conventional acts and signs, one is especially encouraged by the definition of the former category given by Patryas. Let us imagine that—in agreement with his position—we introduce the following definition of the predicate 'blikuje': For every *x: x blikuje* when and only when *x* is a red-haired boy and *x* is on a soccer pitch and *x* kicks the ball with his left foot. According to this definition 'blikowanie' is an act of kicking a ball with a left foot performed by a red-haired boy on a soccer pitch. Since the definition of the predicate 'blikuje' meets the conditions required of predicates referring to conventional acts, hence, it should be acknowledged that *blikowanie* is a conventional act.

It appears, however, that the definition leaves out or at least removes from the foreground a certain aspect of conventional acts. If one knows the definition of the predicate 'blikuje', then the information that John 'blikuje' directs my thoughts to John, being a red-haired boy, who kicks a ball with his left foot on a soccer pitch—and to nothing else. This definition of a conventional act seems to ignore an important intuition—not expressly mentioned in the article by the four Poznań authors, but possibly implicitly assumed by them—that the identification of an act of a given kind, performed by a specific person, under specific conditions, as a conventional act directs our thought to something else than the very act.

If a broad definition of a sign is adopted, considering a sign to be all that indicates, that is, directs a thought, to something beyond the sign itself[16]—and

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[15] L. Nowak et al., op. cit.: 75f.

[16] This definition of a sign is adopted here following U. Żegleń, *Wprowadzenie do semiotyki teoretycznej i semiotyki kultury*, Toruń, 2000: 39–40. In semiotics, in respect of the relation holding between a sign as a means and that to which a sign refers, the term 'represents' is used, while

this is the semiotic role of conventional acts—then it must be acknowledged that a conventional act is a sign. Of course, a conventional act is a sign-act, and a conventional sign for that, in contradistinction to natural signs or symptoms.[17] A different matter, however, is the fact that the name of a conventional act, in itself being a sign, is its linguistic sign. Additionally, the substrate of a conventional act may be formed of uttering or writing a specific expression, that is, a linguistic sign. Thus, the relation between the category of conventional acts and the category of signs consists in the following: first, conventional acts are a special kind of signs (sign-acts in which the content is linked to a given sign-means pursuant to a certain convention, making them conventional signs); second, the substrates of conventional acts are formed in many instances, of uttering or writing certain words, that is, linguistic signs; third, conventional acts are designated using names different from (at least as to their meaning, and sometimes as to their sound form) the names of acts forming the material substrates of these conventional acts, with the difference lying in the fact that the name of a conventional act directs our thought not so much to the substrate of a given conventional act as to what this conventional act as a sign-means indicates or what it represents. This is especially well seen in the case of simple conventional acts, as for instance a greeting, while far harder to notice in the case of conventional acts as complex as for instance, passing a judgment or enacting a law.

Since the beginning of the conception, it has been noticed and emphasised that conventional acts function in a social reality which is regulated by diverse norms: customary, moral, legal and written extra-legal ones. The authors of the original conception of conventional acts focused therefore on legally-relevant conventional acts.[18] Thus, the question arises what the nature of the link is between conventional acts and the rules of sense of these acts on the one part and legal norms, on the other, or more broadly, the norms regulating this sphere of social and cultural reality in which these conventional acts function. On this question, within the conception of conventional acts, two positions can be noticed.

According to the first, implicitly adopted, as it seems, by the authors of the original conception of conventional acts and explicitly expressed by Patryas, the connection between a conventional act and normative systems regulating the life of a community in which such an act occurs, is accidental. The accidentality of the connection can be seen in the predicate, denoting a conventional act of a given kind, being each time defined by an equivalent definition, having the above-mentioned characteristics, therefore, describing in the definiens the properties of the person involved, situation and the act being the substrate of a conventional act of a given type. Whereas, the question whether this act brings about any normative consequences does not matter as far as

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that to which a sign as a means refers is called the object of representation. Ibid. p. 40 ff.

[17] See ibidem: 41–42. A different terminological convention was adopted by Ziembiński, equating signs (in a strict sense) with conventional signs and contrasting them with symptoms. See Z. Ziembiński, *Logika praktyczna*, Warsaw, 2001: 14.

[18] L. Nowak et al., op. cit.: 73 and 85f.

the identification of this act as a conventional act is concerned.[19] In the case of the conventional act of taking a military oath, discussed by the cited author, it must be said that: 'taking a military oath is a loud and clear repetition of the words of the oath after the commander of a unit by a soldier in the Armed Forces of the Republic of Poland, taking part as an oath-taker in a swearing-in ceremony'.[20] A quite separate question, immaterial from the point of view of the definition—therefore irrelevant for the identification of given behaviour as taking a military oath—is the fact that the norms of one system or another associate the act of taking a military oath so defined with specific consequences. For instance, a norm laid down in the Rules and Regulations of the RP Armed Forced forbids the commanding officer to issue a permanent pass to a soldier who has yet to take a military oath. It must be mentioned that in a later publication Patryas distinguished within the category of performative acts—being in his opinion a subclass of conventional acts—a category of constitutive acts by observing that 'a performative act is a constitutive act in a specific legal system if on account of a norm of this system, the performance of this act modifies the scope of substantive-law duties of one of its addressees'.[21] Therefore—as Patryas writes—'the classification of a given performative as a constitutive act in a given legal system is decided by the norms in force in that system'.[22]

According to the second position, which the present author explicitly took in the 2016 publication mentioned earlier and towards which he had already leaned in earlier works, the connection between conventional acts and norms regulating social life is stronger and necessary, so to speak, in every case.[23] To explain intuitions associated with this position, let us now analyse the conventional act of making a promise.

Let us consider a situation when John promises Peter to lend him one hundred zlotys.[24] Let us assume that John performs the act of making a promise by uttering the following words: 'I promise you, Peter, to lend you one hundred zlotys.' The substrate of the conventional act of making a promise, that is, promising, consists, therefore, of uttering the phrase quoted above in a given language, which, after satisfying certain prerequisites, is identified as making a promise. The prerequisites are defined by the rules of sense of the conventional act adopted in a given cultural group (community), although they may not be precise. For instance, in our culture, as a conventional act of making a promise, the act of uttering appropriate words is identified, provided that the utterance is made each time by a person acting consciously. In another culture, though, it may be so that as a promise is considered only the utterance of appropriate words, for instance, by the father of a family. The principal

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[19] W. Patryas, *Performatywy*: 28–30.

[20] Ibidem: 29.

[21] Idem, Performatywy konstytutywne, in: A. Choduń, S. Czepita (eds.), *W poszukiwaniu dobra wspólnego. Księga jubileuszowa Profesora Macieja Zielińskiego*, Szczecin, 2010: 511–529, esp. 517.

[22] Ibidem: 526.

[23] S. Czepita, O koncepcji: 129f.

[24] This example alludes to the example given by J.R. Searle—idem, How to derive „ought" from „is"*?*, *The Philosophical Review* 73(1), 1964: 43–58.

problem concerns the status of the norm: 'If a person has promised, he/she ought to keep the promise', or more accurately: 'If *A* said "I promise to perform act *C*", then *A* has a duty to perform act *C*'.

According to the first position, the criterion for identifying if a person has performed a conventional act of making a promise is only uttering appropriate words in a given language by the right person under appropriate circumstances. If John has satisfied these conditions, then John has performed a conventional act of making a promise. It is an entirely different matter if in a given community a norm is in force, prescribing that any person who has promised keep the promise. This position has a serious shortcoming, though. It does not acknowledge the connection between the conventional act of uttering: 'I promise to do *C*' and the conventional act of making a promise or promising. If for identifying whether a person has performed the conventional act of making a promise, it would suffice to determine if he/she has uttered appropriate words under the right circumstances and having appropriate characteristics, then it would be necessary to accept that such an act is making a promise even in a community in which there is no norm imposing a duty to keep promises.

Of course, this position does not deny the fact that in our current normative culture (which, alas, is eroding) a norm imposing a duty to keep promises is in force or, to put it differently, the conventional act of making a promise is normatively relevant. This position, however, seems to assume that if that culture underwent a change and the norm imposing the duty to keep promises would not be in force any longer in our culture, then uttering the right words by an appropriate person, in a suitable situation would still be making a promise, except that it would change nothing in the obligative sphere.

It seems that in our culture the connection between uttering the words 'I promise to do act *C*', promising to do *C* and the duty to do the act one promised to do is much stronger. The duty to keep a promise is the essence of any promise in this sense that it is covered by the meaning of the words 'I promise'; it is, as it were, encoded in the name 'promise'. The fact that uttering the words 'I promise to do this and that' is assuming an obligation to do what one has promised is determined by the meaning of the words 'I promise' and 'a promise' themselves.[25] A similar situation arises in the case of the conventional act of forgiving. The act of uttering the words: 'I forgive you' is not only the uttering of these words, but a conventional act through which the forgiving person—on account of the meaning of the words 'I forgive'—assumes an obligation to behave towards the person whom he/she forgives as if he/she did not remember about his/her reprehensible behaviour. In the case of the conventional act of inviting a person (to one's home, to play together, to begin negotiations), the inviter—on account of the meaning of the words 'I invite'—assumes an obligation to behave towards the invitee in a specific manner.

[25] This conceptual connection between the uttering of appropriated words and a duty to behave in an appropriate manner is also found in other languages: it is encoded in the meaning of such words as in German, *Ich verspreche* and *Versprechen*, and in French, *Je promets* and *promesse*.

To generalise, it can be said that according to the second position, we are dealing with a conventional act only when an appropriate person performs an appropriate natural act (conventional act of a lower rank) in a suitable situation. In addition, a somehow necessary aspect of the situation is the applicability to it of such norms (customary, moral or legal) which are so connected to a given conventional act as to make its performance modify the normative situation of the person performing the conventional act or other persons. In other words: a somehow necessary aspect or element of the situation where the performance of an appropriate natural act (conventional act of a lower rank) is identified as the performance of a conventional act (conventional act of a higher rank) is the applicability to the situation of such norms that are so connected to the performance of this act as to make its performance modify the normative situation of the person performing the act or other persons.

It must be admitted that, adopted in the second position, the description of the connection between the performance of conventional acts and norms in force in the society in which these acts are committed as necessary on account of the name 'conventional act' has a serious shortcoming. For it forces us to deny the nature of a conventional act to all these acts that satisfy the other conditions set by the definition of the concept of a conventional act —and that we would intuitively subsume under the category of conventional acts—whose performance, however, is not connected, either conceptually or in any other manner, to the normative system in force in a given community. Hence, the performance of such acts does not modify in any way anybody's normative situation. Thus, the concept of a conventional act in the meaning described now would not encompass for instance such speech acts for which, in the concept of speech acts of a given type, there is no requirement that they should modify the normative situation of anybody, in particular the person performing them, for instance assertives.[26] This would be so regardless of the fact that it so happens a normative system in force in a given community associates certain consequences with the performance of an act of that type in a specific situation, for instance, where a legal system provides for the legal consequences of making a declaration of a specific content. So narrow an understanding of the category of conventional acts—which the present author defended still in 2016—must therefore be rejected. On the other hand, it is not true that with all types of conventional acts the connection between conventional acts of a given type and norms is accidental.

This makes us, on the one hand, adopt a broad understanding of the category of conventional acts and on the other, distinguish a class of such conventional acts that share a specific characteristic, namely, the connection between the identification of a specific act by a specific person in a specific situation and the fact that norms setting the normative consequences of this act is necessary in the meaning outlined above. Let us call such acts normative conventional acts. Before they are described in some detail, it is important to organise the relationships between the scopes of names that shall be used below.

[26] J.R. Searle, How performatives work, *Linguistics and Philosophy* 12(5), 1989: 535–558.

The broadest category is that of conventional acts broadly understood. Let us call the rules of sense of a conventional act, indicating we are dealing with a conventional act of a given type designated by a given name when an appropriate person in a suitable situation performs a natural act (conventional act of a lower rank) of an appropriate kind, standard rules of sense of conventional acts.

Conventional acts have—with few exceptions as it seems—social relevance.[27] The social relevance of conventional acts can be viewed from factual or normative perspectives. In the former, the performance of a given conventional act induces some occurrence, especially a change, in the sphere of social relations understood as factual ones, for instance, through the conventional act of making a declaration on a socially relevant matter by a person occupying a high position in the social structure.

The normative perspective in turn, more pertinent to the matter at hand, reveals that it sometimes happens that the norms of a given system stipulate that conventional acts of a given type are normatively relevant only in the system in question as social relations may be regulated by norms belonging to various normative systems. In most general terms, it may be in particular so that the performance of a conventional act is an element of the scope of application of a norm or the description of a situation in which the norm imposes a duty to behave in a certain manner on a specific person. Alternatively, the performance of a conventional act is an element of the scope of normalisation which means that the performance of a conventional act of a given type or the performance of a conventional act of a given type in a specific manner is a duty set by a norm. More complex cases of the normative relevance of conventional acts are possible but they shall not be discussed here.[28] The normative relevance of a conventional act must be relativised each time to a specific normative system: one of customary, moral, legal or other written norms. Hence, a conventional act may be relevant in the system of customary norms at the same time being irrelevant in the legal system. For example, the conventional act of greeting somebody is relevant in the system of customary norms, being an element of culture adopted in Polish society, because the system includes a norm which prescribes that a greeting ought to be returned. The same act, however, is not normatively relevant in the Polish legal system. However, normative systems overlap so to speak, hence conventional acts are often relevant in overlapping systems. For instance, the conventional act of forgiving is relevant in the system of moral and customary norms adopted in Polish society, because it modifies the normative situation of the forgiving person in the manner described earlier. At the same time, forgiving by a donor or a decedent is—by virtue of the Civil Code, Articles 899 and 1010—relevant in the Polish legal system. Ideally, situations can be distinguished where a conventional act of a given type is relevant in a given normative system whatever the situation it is performed in and relevant always basically in the same manner, and oth-

[27] An example of a conventional act deprived of any social relevance is offered by a game of patience.

[28] They are briefly discussed in S. Czepita, O koncepcji: 128.

ers where a conventional act of a given type is relevant in a given normative system only in some instances of its performance or in various instances of its performance, whereby it is relevant in a different manner.

To explain better how the concept of a normative conventional act is to be understood, let us introduce—following Kazimierz Ajdukiewicz—certain semantic categories. Thus, the meaning of an expression (simple or complex) shall mean the manner of using this expression as a sign adopted in a given language by the users of this language.[29] Two expressions have the same meaning if the manner they are used as signs is the same in all aspects. The aspects that we take into consideration using a given expression in this and not another manner vary greatly: they concern not only what the expression refers to, but also how it refers and in what situations language users will use it. The modern conceptions of meaning assume that although it is a manner of using expressions in a language, the manner in which expressions are used by language users is determined by their vision of the world and how these expressions refer to these or other elements, or aspects of the world. This concerns too, or even predominantly, the aspect of the human world that comprises culture and cultural objects.[30]

A concept shall mean the meaning of a name.[31] The set of characteristics shared by all the designates of a name is the content of a name. A characteristic content of name *N* is any set of designate characteristics of this name in which each designate of name *N* has each characteristic from this set and only the designates of name *N* have each characteristic of this set. A characteristic content determines unequivocally the scope of a name. A characteristic content of a name may be pleonastic, that is, it may contain more characteristics than a minimum necessary to set the scope of a given name. A characteristic content of a name that is not pleonastic is called a constitutive content. For a given name, there may be more characteristic contents and constitutive contents than one. For instance, the constitutive content of the name 'hexagon' is both the following set of characteristics: being a geometric flat figure with six sides, as well as the following one: being a geometric flat figure with nine diagonals, because every hexagon and only a hexagon has these characteristics. If we informed somebody that a hexagon is a flat geometric figure with six sides and he/she knowing this would not be able to answer correctly the question: 'Is a given figure a hexagon?', it would show that he/she does not understand the accepted meaning of the name 'hexagon'. If, however, instead of informing somebody that a given flat figure has six sides, we informed him/her that this figure has nine diagonals and he/she would not be able to decide correctly if that figure is a hexagon, we would have no reason to assume that he/she does not understand the meaning of the name 'hexagon', although we could come to believe that his/her knowledge of geometry is rather poor.

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[29] Zob. K. Ajdukiewicz, *Logika pragmatyczna*, Warsaw, 1975: 22–23 and 30.

[30] For a concise review of theories of meaning see J. Speaks, Theories of meaning, in: E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Spring 2016, <https://plato.stanford.edu/archives/spr2016/entries/meaning> [accessed February 2017].

[31] K. Ajdukiewicz, op. cit.: 30.

The above example makes us aware that among the characteristic contents and constitutive contents of names, some contents are specially highlighted by the meaning of these names. The highlighting of such a content of a given name through its meaning involves giving information about an object that it has all the characteristics included in this content and thus making anybody who uses a given name in this very meaning informed enough to—regardless of anything he/she could know besides this information—decide correctly whether a given object should be designated with this name. Such a characteristic content of a name is its linguistic content or a connotation.[32] The linguistic content of a name usually is not clearly specified; this is especially true of simple names, because the line between designate characteristics belonging to the linguistic content and those that do not but belong to the constitutive content instead is blurred.[33]

Let us return to the example of a conventional act of making a promise. The act of making a promise—understood in a way we would approach it because of the standard rules of sense—is, in the cultural system in which we function, in each case culturally relevant and always basically in the same manner, as in this system a norm is in force prescribing that promises be kept. It could be said that the act of making a promise is absolutely—and in this sense necessarily because we function in this culture—normatively relevant in a specific manner. The cultural connection between the act of making a promise and the duty of keeping it has, however, a meaning aspect, that is, concerning the manner of using the expression 'making a promise' or 'promising'. If John uttered the words: 'I promise you, Peter, to lend one hundred zlotys' in a community in which there is no norm setting the duty to keep promises, of which John and Peter would be aware, would we say that John promised Peter to lend one hundred zlotys or rather that he only uttered the words: 'I promise you, Peter, to lend one hundred zlotys' and did not perform the act of making a promise, that is, he did not promise him anything? We can see that this aspect of the description of the act of making a promise is significant, because of the meaning of the expression 'making a promise'. Obviously, the act of making a promise may be performed by both uttering the words 'I promise to do it' or simply 'I'll do it' as well as by a suitable gesture, for instance, nodding one's head in the context of a prior question of a specific content. The standard rules of sense of the conventional act of making a promise give much leeway as to what natural act or a conventional act of a lower rank is identified as making a promise. However, one thing is always required in each single case: neither uttering specific words nor making a specific gesture is identified as making a promise if by uttering these words or making this gesture a given person does not assume an obligation to perform a specific act. Telling what act, by whom performed and in what situation is not, therefore, an answer to the question what a promise is (at least it is not an answer conveying the essence of a promise), but an answer to the question how a promise is made. Similarly:

[32] Ibidem: 50–53.

[33] This is stressed by Ajdukiewicz, op. cit.: 53.

one may forgive another by uttering suitable words or making a gesture.[34] In each case, however, for the utterance of appropriate words or the making of the right gesture to be identified as forgiving, it is necessary that the person in question assume an obligation by this behaviour to behave as if he/she did not remember about somebody's reprehensible behaviour. Similarly, by uttering appropriate words and making a suitable gesture it is possible to perform the conventional act of inviting.

To generalise, we are dealing with a normative conventional act when a conventional act of a given type, designated by name *N* in a given language, is relevant in a given normative system on every occasion of its performance. As a result, a specific behaviour by a specific person in a specific situation is identified as a conventional act of a given type, designated by name *N*. An important aspect of the situation in question is its subordination to a norm or norms connected to the conventional act of that type in such a way as to modify the normative situation of the person performing it or other persons. Consequently, if we take as the meaning of a name, the established manner of using—in various aspects—a given name in a given language, it must be said that the meaning of the name of a given type of conventional acts in a given language is in such cases—in certain aspects—determined by the fact that a conventional act of that type brings about specific normative consequences. Hence, normative conventional acts are such conventional acts about which, on account of the meaning of a name for a conventional act of a given type, we think and speak in a given language as ones bringing about specific normative consequences so much so that if an act of the appropriate kind, performed by the right person in suitable circumstances did not bring about these normative consequences, we would not identify it as a conventional act of a given type.

Let us consider now the relevance of the distinction of conventional act varieties made above for conventional acts in law. It must be remembered that, first, the rules of sense of conventional acts form stratified cultural systems in which individual strata are superimposed in a complicated manner, second, the normative systems in which conventional acts function are not separated from one another. Obviously, law regulates not only conventional acts, but also natural ones.

If natural act *C*, designated in a given language by name *N*, is legally regulated by laying down that act *C* performed in that and not another manner, under those and not other circumstances, entails specific legal consequences (without introducing a new term as the name for act *C*), typically we are dealing exclusively with the normative regulation of this act, determining its relevance in a given legal system. However, act *C* performed as required is treated in the juristic literature as 'act *C* in the legal sense', because only performed in this and not another manner does it bring about legal consequences. Already then, the line between the meaning of name *N* of act *C* in a given language and the relevance of act *C* in the legal system starts to become fuzzy.

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[34] As a character in *Pan Tadeusz*: 'marked a cross in the air, […] gave a sign that he forgave the murderer (Jacek Soplica).'

The objects of legal normative regulation include also conventional acts not being normative conventional acts. These are all kinds of notifications, declarations of knowledge, acknowledgements and attestations, that is linguistic acts whose function in a given culture is not to modify anybody's extra-legal normative situation, but which—by virtue of the legislator's decision—are normatively relevant in a given legal system.[35] As a rule, there is no problem then with telling apart the meaning of names of given types of conventional acts from their relevance in the legal system.

Of course, legal regulation may extend to normative conventional acts in extra-legal norm systems, as for instance the act of forgiving mentioned earlier. The act of forgiving—not having, according to a common opinion, the nature of an act in law—entails, as mentioned above, legal consequences if the forgiving person has previously made a donation to the person whom he/she has forgiven, or made a will in which he/she has pretermitted and disinherited such a person called by law to succession. The consequences of forgiving, set by extra-legal norms, do not in principle, interest jurists. As mentioned earlier, the conventional act of making a promise results in the person performing the act assuming an extra-legal obligation to behave as he/she has promised, provided that he/she satisfies the conditions of its performance set by the cultural rules of sense of the act such as an appropriate age or the awareness of the meaning of the words he/she utters. If the person who has performed an act of making a promise has capacity for acts in law and has made a promise 'by a public announcement' to 'pay a reward for making a specific act', then he/she has performed an act in law of making a public promise and has assumed a legal obligation to behave as he/she has promised (Civil Code, Article 919).

The last example raises the question what the nature of certain categories of acts is in the typology of conventional acts presented above. The categories meant here include acts in private and public law, especially legislative acts and acts of law enforcement. A specific question is whether they should be subsumed under the distinguished category of normative conventional acts. A comprehensive answer to this question would call for a thorough study how these categories are understood in the juristic literature, which would require much more space than offered by this article. Let us only try to answer briefly the question whether acts in law have the nature of normative conventional acts. First, we shall analyse the concept of acts in law in the aspects of interest to us here and, second, we shall consider, by way of example, a typical act in law.

If one studies the definitions of the concept of acts in law in the Polish juristic literature on civil law, it can be easily noticed that they all share—regardless of major differences between them—the assumption that an act in law is such behaviour or a complex of instances of behaviour by a person or persons (facts of a case) a necessary element of which is a declaration of will (real or only attributed) to bring about specific legal effects. The behaviour or

[35] For example notification of defects in things (CC, Article 563), improper admission (CC, Article 123, para. 2), giving receipt for the payment of a debt (CC, Article 466), notification of money transfer (CC, Article 515).

a complex of instances of behaviour brings about at least some intended legal effects.[36] The meaning (manner of using) of the name 'act in law', therefore, assumes that, first, in a given society, there is (functions) law as a peculiar system of norms and second, behaviour by an appropriate person consisting in making a declaration of will of a specific content and under suitable circumstances brings about at least some legal effects covered by the content of the declaration or modifies the legal situation of the person performing the act or other persons.[37] An act in law, therefore, is taken in the legal language, of which the language of the juristic literature and judicial decisions is a major species, to be a normative conventional act having relevance in a legal system.

Let us have a look then by way of example at the act in law of entering into a contract of sale. The entering into a contract of sale is not merely uttering suitable words by appropriate persons, drafting and signing a suitable text or suitable factual behaviour (in the case of a contract entered into *per facta concludentia*), but behaviour through which specific persons—because a legal system comprising norms regulating the institution of sale is in force in a given society—modify their legal situation. The meaning of the name 'entering into a contract of sale' is set, in its major aspect, by the fact that acts designated by this name bring about specific normative consequences and the users of a given language will not use this name to designate acts not having such consequences. However, are all norms making a contract of sale relevant in a given legal system covered by the meaning of the name 'contract of sale'? Would any amendments to the law, that is, to the norms setting the consequences of performing the act of entering into a contract, make us deny the character of a contract of sale to an act of a given type?

A practising lawyer could say that he/she designates the meaning of the name 'contract of sale in the meaning imparted to it by the provisions of the Civil Code in the wording in force at a given moment', giving thus proof that he/she understands the meaning of this name in this very way. Lawyers, however, as a rule use the name 'contract of sale' as if they considered relevant for the meaning of the name 'contract of sale' only some aspects of the legal relevance of acts designated by this name, namely the most important ones, defining the 'essence of sale'. In the Polish legal language, this treatment is given to the Civil Code, Article 535, para. 1, and the norms it lays down: at least the norm imposing the duty on the seller to transfer to the buyer the ownership of the object of the contract and the norm imposing the duty on the buyer to pay a price. Similarly, the essence of a lease is set out in the Civil Code, Article 659, para.1, and the norms it lays down: the duty of the lessor

[36] See for example: S. Grzybowski, Czynności prawne. Zasady ogólne, in: *System prawa cywilnego*, vol. 1: *Część ogólna*, ed. S. Grzybowski, Warszawa and Wrocław, 1985: 479; A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warsaw, 2001: 253; Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warsaw, 2011: 218.

[37] A tendency, seen sometimes in the juristic literature on civil law, to treat behaviour meeting required conditions as acts in law, even if they do not bring about any of the intended legal effects, leads to—rejected by the Polish legislator—the equation of an act in law with a declaration of will.

to convey a property to the lessee for use for a definite period of time and the duty of the lessee to pay rent to the lessor.

To generalise, it must be said that only some norms are treated as relevant with respect to the meaning of the name of a given type of acts in law, that is its linguistic content in the legal language. These are the most important norms that spell out the legal consequences of these acts, while the other norms are treated as irrelevant for the meaning and linguistic content of the name of a given type of act. They are believed to determine merely the relevance of acts designated by this name in the legal system currently in force. A lawyer who knows that the regulations of a given type of acts in law in a given legal system have been and will be amended, treats as determining the 'essence' of a given type of acts in law and covered by the linguistic content of the name of this type of acts in law, only these norms spelling out the legal consequences of this type of acts that are kept intact in successive versions of legal provisions. Of course, this by no means signifies that the catalogue of norms covered by the linguistic content of the name of a given type of acts in law is clearly defined. Generally speaking, it is most clearly defined in the case of these types of acts in law that are made special by being separately legislated on; the definition is less clear in the case of acts in law, distinguished by uncontroversial opinions expressed in the juristic literature and as yet not separately legislated on.

In the case of a completely untypical act in law, the legal language obviously lacks a name for the type of acts in law under which a given specific act could be subsumed, but lawyers, identifying any behaviour (set of instances of behaviour) as an act in law (untypical too), assume—because of the meaning of the name of 'act in law'—that such behaviour (set of instances of behaviour) is meant with which legal norms associate appropriate consequences. It can be said that the linguistic content of the name 'untypical act in law' comprises the requirement that the behaviour (set of instances of behaviour) designated by this name be connected with legal norms in such a manner that the behaviour modifies the legal situation of the person performing the act or other persons, although the precise content of these norms is defined above all by the content of the declaration of will being an element of a given untypical act in law. Untypical acts in law remain thus normative conventional acts and, for that matter, legally normative, because they are identified as acts in law.[38]

There are many reasons for the fact that the line between these legal norms, ones covered by the linguistic content of the name of a given type of acts in law and those which set the legal consequences of performing an act of a given type, (not being covered by the linguistic content of the name of this type of acts) is rather blurred. The line between the meaning of the name of a given type of acts in law and their relevance in a legal system is not sharp either, is it? The legal language is a variety of a respective ethnic language

[38] Radwański speaks in the context of the minimal content of an act in law of 'an element (operative) indicating the legal consequences of a performed act'— Z. Radwański, Treść czynności prawnej, in: *System prawa prywatnego*, vol. 2: *Prawo cywilne—część ogólna*, ed. Z. Radwański, Warsaw, 2008: 226.

and the meaning of the names of acts in law takes over, so to speak, specific aspects of meaning of these names from the general language. The meaning of the names of the types of acts in law is defined, on the one hand, by a certain cultural tradition (traditions of Roman Law and Common Law), and on the other , by the way these names are used by the current legislator, who does not have to adhere to the meaning these names have been given hitherto, nor has to be consistent (and ever more often is not). The law and language of the law do change very quickly these days.[39] It appears, however, that even if we reject Adolf Reinach's vision of a priori legal concepts,[40] it must be admitted that the emergence of specific laws as a certain social institution[41] at a specific stage in the development of mankind is also the emergence of terms and concepts referring to acts performed within this institution. These concepts reflect the normative aspect of the institution of law as a whole and the categories of acts undertaken within this institution.

Returning to the category of normative conventional acts as superordinate over that of acts in law, it must be acknowledged that the concept of normative conventional acts is a typological concept.[42] If, however, people always function in some culture, never outside any culture it is agreed also that an element of every culture is a certain normative stratum concerning human relations[43] defined by the assumption that man is a social creature. Moreover we recognise that others are persons and not things and that is why we have duties towards them. In every culture and in every language therefore, terms and concepts function, reflecting the normative aspect of human relations and in so doing, designate normative conventional acts.

Stanisław Czepita
University of Szczecin
stanislaw.czepita@wpiaus.pl

ON THE CONCEPT OF A CONVENTIONAL ACT AND ITS TYPES

Summary

The concept of a conventional act is well-established in Polish legal thought. The aims of this article are to consider the relations between: firstly—the category of conventional acts and the semantic category of signs, and secondly—the conventional acts and the normative systems,

[39] On the legal language and language of the law see M. Zieliński, Języki prawne i prawnicze, in: W. Pisarek (ed.), *Polszczyzna 2000. Orędzie o stanie języka na przełomie tysiącleci*, Cracow, 1999: 50–74; T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, Cracow, 1986.

[40] A. Reinach, *Aprioryczne podstawy prawa prywatnego* [originally published as *Zur Phänomenologie des Rechts. Die apriorischen Grundlagen des bürgerlichen Rechts*], trans. T. Bekrycht, Cracow 2009, oraz T. Bekrycht, *Ontologia prawa w fenomenologii Adolfa Reinacha*, Warsaw, 2009.

[41] For institutional approach to law see T. Gizbert-Studnicki, Ujęcie instytucjonalne w teorii prawa, in: J. Stelmach (ed.), *Studia z filozofii prawa*, Cracow, 2001: 123–134.

[42] On typological concepts see T. Pawłowski, *Tworzenie pojęć w naukach humanistycznych*, Warsaw, 1986: 168–181.

[43] On this point see J. Kmita, in: G. Banaszak, J. Kmita, *Społeczno-regulacyjna koncepcja kultury*, Warsaw, 1994: ch. II, pp. 42–49.

especially the legal ones. The author holds the view that conventional acts are a special kind of signs, strictly speaking: more or less complex sings-actions of conventional (non-natural) character. As regards the relations between conventional acts and normative systems the author distinguishes conventional acts in the broader sense, normatively important conventional acts, as well as normative conventional acts. Normative conventional acts are such normatively important conventional acts for which the meaning of the term referring to acts of a given type is—in an important aspect—marked by the fact that a conventional act of this type creates certain normative consequences. The author puts forward the thesis that acts in law under private law (German: *Rechtsgeschaeftes*) are actually normative conventional acts important in a legal system.