ABSTRACT

The dissertation is submitted for the degree of Doctor of Philosophy (PhD) under the educational programme 8D04201 "Law".

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Title: "The Legal Nature and Consequences of a Unilateral Expression of Will".

General description of the work. The dissertation is a comprehensive study of the unilateral expression of will under the civil law of the Republic of Kazakhstan, compared with German, Austrian, Swiss, Dutch and Russian law and, on particular issues, with the law of France, Italy, Spain and England. It seeks to determine the legal nature of a unilateral expression of will, to distinguish it from adjacent constructs and to establish the legal regime of unilateral transactions: the limits within which the general provisions on transactions and on contracts apply to them, the moment at which their legal effect arises, the admissibility of conditions and the possibility of revocation.

The study rests on two classification criteria: receptivity, that is, the need for the expression of will to reach its addressee, and interventiveness, that is, an effect on the legal sphere of the addressee irrespective of the addressee's will. Their consistent application to every issue of the legal regime made it possible to propose a coherent model for regulating unilateral expressions of will, to identify gaps in the Civil Code of the Republic of Kazakhstan (hereinafter, the Civil Code) and to formulate proposals for its improvement, which may be taken into account in drafting the new Civil Code.

The Relevance of the research topic is determined above all by the recodification of civil legislation that has now begun. In the Address to the People of Kazakhstan of 28 October 2026 the Head of State pointed to the need to adopt a new Civil Code. Recodification raises the question of revising the general provisions of the Code, and first of all the doctrine of the transaction, through which civil law links the establishment, modification and termination of rights and obligations to the will of the participants in civil commerce. The Concept of Legal Policy of the Republic of Kazakhstan until 2030 considers it expedient to include in the Civil Code provisions on resolutions of meetings as independent grounds for the creation, modification and termination of civil rights and obligations.

Having adopted the pandectist concept of the transaction, the Civil Code devotes only two articles to unilateral transactions (Articles 148 and 149), while the general provisions on form, invalidity and conditions of transactions are designed primarily for contracts. The definition of a transaction through an action (Article 147 of the Civil Code) leads in practice to two opposite distortions. In some cases factual conduct is treated as a transaction even though there is no will directed at a legal effect: an heir's residence in the house of the deceased is treated as acceptance of the inheritance. In other cases the transactional character of an expression of will is denied: a notice of unilateral withdrawal from a contract is treated as a document that is not a transaction.

The law contains no criteria for distinguishing unilateral expressions of will from transaction-like notices, the nature of resolutions of meetings is not defined, and no boundary is drawn between a unilateral transaction and a contract (release of a debt, offer and acceptance). The Civil Code has no general rule on the moment at which an addressed expression of will takes effect, and the rule in paragraph 2 of Article 176 follows the opposite logic. Article 1116, a conflict-of-laws rule, subjects obligations arising from unilateral transactions to the law of the place where they are made and requires that place to be determined under the law of the Republic of Kazakhstan; yet neither the general provisions on transactions nor any other rules of the Civil Code indicate where a unilateral transaction is deemed to be made. There are no rules on the admissibility of conditions in unilateral transactions, and no general rules on consent to a transaction or on the revocation of unilateral expressions of will. Courts and notaries fill these gaps case by case and inconsistently.

The topic corresponds to the priority area of scientific development "Intellectual Potential of the Country". Unilateral expressions of will are an everyday part of civil commerce, which also determines the social significance of the topic.

The aim of the dissertation is to determine the legal nature and consequences of unilateral expressions of will, to establish the limits within which the general provisions on transactions and on contracts apply to them, and to develop criteria for resolving issues of the moment at which their legal effect arises, the admissibility of conditions and the possibility of revocation, together with proposals for improving the civil legislation of the Republic of Kazakhstan.

The research objectives are as follows:

• to define the concept and legal nature of a unilateral expression of will;

• to examine the relationship between will and expression of will as elements of a transaction;

• to distinguish unilateral expressions of will from similar constructs;

• to establish the practical significance of dividing unilateral expressions of will into receptive and non-receptive, interventive and non-interventive;

• to determine the model of the legal regime of unilateral transactions under the civil legislation of the Republic of Kazakhstan, as well as the limits and consequences of applying to them the general provisions on transactions and on contracts;

• to determine the limits of admissibility and the consequences of making the legal effect of a unilateral expression of will subject to a condition;

• to determine the criteria for the admissibility of revoking a unilateral expression of will;

• to formulate proposals for improving the Civil Code.

The object of the research is the social relations that arise when unilateral expressions of will are made. **The subject of the research** comprises the rules of the civil legislation of the Republic of Kazakhstan and of foreign legal systems governing unilateral expressions of will, the practice of their application, and doctrinal approaches to unilateral expressions of will.

Scope of the research. The concept of a unilateral expression of will is broader than that of a unilateral transaction: an offer, an acceptance and a vote cast at a meeting are unilateral expressions of will, yet they form part of the constituent facts of a contract or of a resolution of a meeting. A unilateral transaction consists of a single expression of will and therefore forms the core of the study; other unilateral expressions of will and adjacent acts are examined to the extent necessary to establish its boundaries. The study is confined to the general provisions of civil law. It does not cover unilateral acts of a public-law or procedural nature, the special regimes of particular named unilateral transactions, the procedure for concluding a contract or adopting a resolution of a meeting as such, or conflict-of-laws rules, except for the question of the place where a unilateral transaction is made.

Research methodology. The formal-legal (doctrinal) method was used to interpret the rules of the Civil Code and other legislative acts, including by way of teleological reduction. The comparative-law method in its functional variant was used to compare the solutions that different legal systems give to the same questions. The historical-legal method was used to analyse the formation of the doctrine of the transaction and of the expression of will in German pandectist scholarship. The classification method was applied in developing and testing the divisions of unilateral expressions of will.

The method of case-law analysis made it possible to verify how the questions under study are resolved by Kazakhstani courts. The empirical basis consists of 33 judicial acts of Kazakhstani courts for 2009–2026 and 5 normative resolutions of the Supreme Court of the Republic of Kazakhstan; acts of Russian courts and of a Dutch court were used for comparison. The sample is purposive: it includes acts in which the characterization of a unilateral expression of will or notice affected the outcome of the dispute. The normative basis comprises the Civil Code and other legislative acts of the Republic of Kazakhstan, the civil codes of Germany, Austria, Switzerland, the Netherlands, France, Italy, the Russian Federation and Ukraine, and supranational restatements of private law.

Scientific novelty of the research. Particular aspects of unilateral transactions have been studied in Russian doctrine (N.V. Rezanov, A. Akuzhinov, E.A. Krasheninnikov and Yu.V. Baigusheva, the #Glossa commentaries edited by A.G. Karapetov) and in German, Austrian, Swiss and Dutch literature. In Kazakhstani doctrine unilateral expressions of will have not been the subject of a separate study: particular aspects are addressed in commentaries on the Civil Code and in textbooks, as well as in works by Yu.G. Basin, M.K. Suleimenov, S.I. Klimkin, A.G. Didenko, S.V. Skryabin and other authors.

The novelty of the research lies in the fact that the criteria of receptivity and interventiveness, which doctrine had applied to particular issues, are made the basis of a coherent model of the legal regime of a unilateral expression of will. This model makes it possible to resolve, by uniform criteria, questions of the interpretation of an expression of will, the moment and place at which it is made, its form, invalidity, the admissibility of conditions and revocation. With regard to Kazakhstani law, the model of the legal regime of unilateral transactions under the Civil Code is described

for the first time, and gaps are identified that cannot be filled by simply transplanting foreign solutions.

The classification criteria themselves are not introduced by the author: they are taken from German and Russian doctrine. The author's own contribution is as follows: these criteria are applied throughout to all issues of the regime of a unilateral expression of will and tested against Kazakhstani legislation and case law; a combined model of regulation of unilateral transactions under the Civil Code is substantiated, and it is shown that the closed list of grounds applies only to interventive transactions; the questions of the place where a unilateral transaction is made for the purposes of Article 1116 of the Civil Code and of the relationship between the receipt principle and paragraph 2 of Article 176 of the Civil Code are resolved; legally significant notices under Kazakhstani legislation are characterized; spousal consent and its revocation, the conditional will and the release of a debt are examined on Kazakhstani material; proposals for amending the Civil Code are formulated.

Main propositions submitted for defence.

1) The definition of a transaction through an action does not take into account the ways in which will is expressed. An expression of will may consist in an action, in inaction or in silence. Where, however, the consequences of conduct arise by operation of law irrespective of the direction of the will, such conduct is not a transaction. A transaction should therefore be defined as an expression of will, or a set of expressions of will, directed at the creation, modification or termination of civil rights and obligations. This definition is general, since a unilateral transaction consists of one expression of will, a contract of the concurring expressions of will of the parties, and a resolution of a meeting of the expressions of will of the participants in a civil-law community which meet a set of criteria: they relate to a question common to the participants, they run in the same direction and are addressed not to one another but to the person chairing the meeting, they merge into a single resolution under the majority rule in an established procedure, and the resolution adopted also binds those participants who voted against it or did not vote. This distinguishes a resolution of a meeting from parallel expressions of will of several persons, each of which produces its own legal result;

2) a unilateral transaction is distinguished from adjacent constructs not by the name of the act but by a set of criteria. A unilateral transaction is an expression of will which: (a) is directed at the creation, modification or termination of civil rights and obligations; (b) produces its legal effect by virtue of that direction of the will and with the content determined by it; (c) is in itself sufficient for that effect to arise; (d) emanates from one party, which may consist of several persons. A transaction-like notice differs from it in the first two criteria: (a) it is a volitional act and outwardly resembles an expression of will, but (b) its content is a communication of a fact or an intention, while its legal consequence is determined in advance by the law, by the principle of good faith or by the terms of an earlier transaction and arises irrespective of whether the will of the sender is directed at it. The rules on transactions therefore apply to it by statutory analogy and only selectively. An offer, an acceptance and a participant's vote do not meet the third criterion: being unilateral

expressions of will, they do not in themselves bring about the result at which they are directed and form part of the constituent facts of a contract or of a resolution of a meeting without being independent transactions. The fourth criterion distinguishes a unilateral transaction from a contract: where the will of the addressee is also required for the effect to arise, the transaction is a contract, as is the case with the release of a debt. A resolution of a meeting having the features set out in proposition 1 is a special type of transaction that can be reduced neither to a unilateral transaction nor to a contract. The outcome of this delimitation determines which rules on form, invalidity and time limits are to be applied;

3) a unilateral expression of will is receptive if it meets a set of criteria: (a) it is addressed to a particular person or persons (the addressee); (b) in order to take effect it must be delivered to the addressee, that is, it must come within the addressee's sphere of control in such a way that the addressee has an opportunity to become acquainted with it, whereas actual acquaintance is not required; (c) until delivery it produces no legal effect. A non-receptive expression of will does not require delivery. An objective outward expression of the will is sufficient for it to be made, and the legal effect arises irrespective of whether the persons whose rights it affects are aware of it (a will, a public promise of a reward, the abandonment of ownership). Receptivity is the basis for resolving questions of the moment of legal effect, the risk of non-delivery, revocation, interpretation and the place where the transaction is made. For a receptive expression of will, delivery to the addressee is decisive, and the risk of non-receipt due to circumstances depending on the addressee must be borne by the addressee. The place where a receptive transaction is made should be the place where the expression of will reaches the addressee. For a non-receptive transaction it is the place where the will is expressed;

4) where a legal system has adopted the pandectist concept of the transaction and at the same time refers to contract rules, the regulation of unilateral transactions acquires a combined character. Its specific content is determined by interventiveness, that is, by an effect on the legal sphere of the addressee irrespective of the addressee's will. A unilateral transaction is interventive if it meets the following set of criteria: (a) its legal effect arises for a particular person who does not take part in making it; (b) that effect consists in depriving that person of rights, imposing obligations on that person, modifying or terminating a legal relationship to which that person is a party, or otherwise changing that person's legal position; (c) it arises irrespective of that person's will, the decisive point being not whether the effect is desirable for the addressee but whether it can be imposed without consent. A non-interventive transaction restricts the rights of the declarant or grants other persons legal opportunities which they are free to use or not to use. Intrusion into another person's legal sphere is permissible where a formative (potestative) right exists; without it an interventive transaction produces no legal consequences. The general rules on form and invalidity, developed by generalising contractual solutions, require adaptation, the common principle of which is the protection of the addressee of an interventive transaction against legal uncertainty imposed on the addressee. Interventiveness is assessed in relation to a particular person and does not coincide with receptivity. Receptivity characterises the way in which an expression

of will takes effect, whereas interventiveness characterises its impact on another person's legal sphere. A receptive transaction may therefore be either interventive (withdrawal from a contract, set-off) or non-interventive (the grant of a power of attorney);

5) the question of conditions cannot be resolved in the same way for all unilateral transactions. Any condition may be included in a non-interventive transaction unless the law or the nature of the transaction provides for an exception. For interventive transactions the starting point is a prohibition. It may be departed from where the condition has been agreed in advance with the addressee, and where a suspensive condition lies within the sphere of the addressee's informational control. An expression of will containing an inadmissible condition remains valid without that condition only if a reasonable addressee has grounds to assume that the declarant would have made the transaction without it;

6) in the absence of special regulation, the revocation of a unilateral expression of will is determined by its receptivity and interventiveness: before delivery a receptive expression of will is revocable; after delivery an interventive one is irrevocable, while a non-interventive one may be cancelled for the future if this follows from the law or from its nature;

7) on the basis of the provisions formulated, amendments and additions to the civil legislation of the Republic of Kazakhstan are proposed concerning the definition of a transaction, the moment at which a receptive expression of will takes effect, the limits and consequences of interventive transactions, and the conditions and revocation of unilateral expressions of will; they may also be taken into account in drafting the new Civil Code. They are listed in the conclusion.

Theoretical and practical significance of the research. The results of the dissertation may be used in further research on unilateral transactions and contracts and in teaching courses on civil law, contract law and the law of obligations. The dissertation may be useful to courts, notaries and other law-applying bodies in interpreting and applying the rules on unilateral transactions, and the proposals formulated may be used in improving the Civil Code and in drafting the new Civil Code of the Republic of Kazakhstan.

Dissemination of the research results. The main propositions and conclusions of the dissertation are reflected in articles published in scientific journals recommended by the Committee for Quality Assurance in Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan:

1. "The concept and correspondence between internal and external will (expressed will) within structure of a civil transaction". Bulletin of the Karaganda University. Law Series. 2025. Vol. 30, No. 1(117). P. 118-129;

2. "Stability of the legal effect of a unilateral expression of will mortis causa made subject to a condition" (in Russian). Pravo i gosudarstvo (Law and State). 2025. No. 2(107). P. 68-74;

3. "The presumption of the non-mandatory nature of rules on contracts in the Civil Code of the Republic of Kazakhstan: an article-by-article assessment and a

legislative proposal" (in Russian; co-authored with M.A. Akhmadi and R.M. Malkov). Pravo i gosudarstvo (Law and State). 2026. No. 3(112). P. 49-66.

The applied conclusions on the role of unilateral expressions of will in the transfer of intellectual property rights were tested in a collective monograph issued by an international publisher: Abylaiuly A., Kokzhalov R., Abenova A., Babajanyan Ye. Kazakhstan. In: International Encyclopaedia of Laws: Intellectual Property, ed. by H. Vanhees. Alphen aan den Rijn: Kluwer Law International, 2026 (the author prepared Chapters 6, 10 and 12, including the chapter on the transfer of intellectual property rights and the section on their inheritance).

The dissertation was discussed at an extended meeting of the Research Committee of the Law School of Maqsut Narikbayev University, with the participation of representatives of the Department of Private Law, on 30 October 2026 (Minutes No. 78) and was recommended for public defence.

Structure of the research. The dissertation consists of an introduction, three chapters comprising ten sections divided into subsections, a conclusion and a list of sources. Each chapter ends with conclusions. The dissertation is 218 pages long.

The first chapter examines the concept and legal nature of a unilateral expression of will. It shows that a transaction is not an action but an expression of will or a set of expressions of will, and that a unilateral expression of will is broader than a unilateral transaction. It considers the relationship between will and expression of will, the theories of that relationship and their reception in Kazakhstani law, and the ways in which will is expressed. A unilateral expression of will is distinguished from real acts, transaction-like notices, the contract and the resolution of a meeting by a set of criteria; borderline cases are analysed, including the release of a debt, the public promise of a reward, and offer and acceptance.

The second chapter deals with the classifications of unilateral expressions of will. It examines the division into receptive and non-receptive expressions of will and its practical significance for the moment of legal effect, the allocation of the risk of non-delivery, revocation, interpretation and the place where the transaction is made. The division of unilateral transactions into interventive and non-interventive is substantiated, and it is shown that an interventive transaction is permissible only where a formative (potestative) right exists. The criteria of receptive and non-receptive expressions of will and of interventive and non-interventive transactions are formulated, and it is shown that the two divisions do not coincide. The division of unilateral transactions by the type of legal consequences is briefly described.

The third chapter examines the legal regime and consequences of a unilateral expression of will. It describes the combined model of Kazakhstani regulation and considers the freedom to make unilateral transactions, their form and invalidity, and the application to them of the general rules on contracts by statutory analogy. It also examines the admissibility and consequences of making the legal effect of a unilateral expression of will subject to a condition, including the conditional will, the revocation of a unilateral expression of will, and consent to a transaction and its revocation.

The conclusion sets out the main findings of the research and proposals for amending and supplementing the Civil Code: on the definition of a transaction, on

the moment at which a receptive expression of will takes effect, on the limits and consequences of interventive transactions, on the conditions and revocation of unilateral expressions of will, and on resolutions of meetings.