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Abstract:

The text addresses the foundational problems of the amendment to the Civil Code of Poland of 10 July 2015. It introduced significant alterations to the provisions on formal requirements, seeking to modernize them and provide higher degree of flexibility. The crux element of this reform has been the introduction of a new type of formal requirement – the documentary form (Article 772 of the Civil Code) – and of the definition of a document (Article 773 of the Civil Code). These new legislative concepts have been based on an assumption of dividing regulatory tasks between the legislation and the practice (both conduct of the parties to juridical acts and the judiciary). They do not indicate exhaustively technical features that have to be met to observe particular formal requirement, but only frame them in a general way, indicating the core functional features (e.g. intelligibility of a document’s content and identifiability of its author). This is a novel approach, providing formal requirements with a higher degree of flexibility at the cost of precision and definitiveness of a formal requirement. Construed in this way, formal requirement has to be supplemented by the parties to the particular juridical act (who can choose particular way of communication statements between them) or courts (which typically scrutinize ex post, if particular way of conveying information satisfied the formal requirement). The text expands on this foundational observation, framing the conceptual and practical features of the attitude adopted in the amendment. It tries also to analyze the newly-adopted solutions against the background of similar concepts in the European Union regulations and to integrate them with the already existing framework of domestic private law.