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UNITY OF CIVIL LAW AND THE LEGAL REGULATION OF COMMERCIAL COMPANIES – SELECTED ISSUES

Abstract

The introduction of the principle unity of civil law into the Polish civil law with the entry into force of the Civil Code in 1965 did not involve ensuring internal consistency of normative acts forming the core of civil law, i.e.: the Civil Code, regulations regarding commercial companies contained in the 1934 Commercial Code, the Family and Guardianship Code, and the law on land and mortgage registers. The Code of Commercial Companies of 2000, to some extent, but not completely, pursued the postulate of ensuring the consistency of the provisions of the Civil Code and the law of commercial companies. In the legal literature, attention is paid increasingly to the necessity to complete the process of adjusting the Commercial Companies Code to the Civil Code as well as the introduction of relevant modifications and corrections to the Commercial Companies Code ensuring the necessary coherence of the legal regulations of these codes. In the first place, this is required by the following issues:

Firstly, concerning the nature, manner and scope of applying the freedom of contract principle in the area of legal regulation of commercial companies.

Secondly, the relation between the provisions of the Civil Code concerning acts in law, in particular contracts, and articles of association in commercial companies as well as the so called invalidity of articles of association (Article 21 CCC).

Thirdly, the issues concerning the concept of an act in law and resolutions of a capital company body, invalidity of an act in law and challengeability of a resolution of the general meeting or of the general assembly of a capital company, as well as the explanation of the so called non-existent resolutions.

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Fourthly, the legal and financial status of the spouses where at least one of them is a participant in a commercial company.

Fifthly, synchronization of the provisions of the Act on the National Court Register concerning registration procedure with structural provisions of the Commercial Companies Code concerning the functioning of commercial companies. The application of adequate provisions of the Code of Civil Procedure is to be considered in this respect.

Keywords: unity of civil law, commercial companies

I. Entry into force of the Civil Code in 1965 meant – in accordance with the overwhelming view of the creators of the Civil Code (hereinafter referred to as CC) – the introduction of the principle of unity of civil law.¹ However, there were also opinions of outstanding scholars that it was only a purely formal intervention because the aforementioned unity of civil and commercial law resulting from the declared repeal of the Commercial Code did not involve ensuring internal consistency of legal provisions making up “Civil Law united”, “united” normative acts forming the core of civil law, i.e. the Civil Code, regulations concerning commercial companies contained in the 1934 Commercial Code, still valid, though propaganda-related repealed by article VI of the regulations introducing the Civil Code, the Family and Guardianship Code (hereinafter referred to as FGC) and the law on land and mortgage register. At the time prof. Stefan Grzybowski aptly stated, “From the point of view of the correctness of the legislative technique all provisions of the Commercial Code should rather be repealed and replaced as needed by new ones, more adapted to current needs”.² Nevertheless, “The lawmaker chose (...) the path indicated by legislative tactics, and justified by the expectation that the parts of the Commercial Code maintained in force for the time being would be repealed in the future”.³ The expectation of the communist lawmaker did not come true in the end and, fortunately, the Commercial Code was “truly” repealed only at

¹ Cf. e.g. Czachórski, W., *Prawo zobowiązań w zarysie*, Warszawa 1970, p. 24 and Wasilkowski, J., *Metoda opracowania i założenia kodeksu cywilnego*, “Państwo i Prawo” 1964, No. 5–6.

² Cf. Grzybowski, S., in: Grzybowski, S. (ed.), *System Prawa Cywilnego*, Vol. III part 2, Wrocław 1976, p. 842.

³ Cf. *ibidem*.

the end of 2000.⁴ On 1 January 2001 the Commercial Companies Code (hereinafter referred to as CCC) came into force, which to a certain extent – but not fully – fulfilled the postulate of ensuring cohesion of the provisions of civil law (the Civil Code) and commercial companies law.

When we reach for the literature from 20 years ago the reason for only partial synchronization of the Civil Code and the Commercial Companies Code provisions will become understandable. Well, the worst problem discussed at the time did not consist in ensuring consistency of the provisions of the broadly understood civil law but the question whether to repeal the Commercial Code at all and ultimately liquidate the separation of commercial companies law from civil law; next – whether and in what legal shape to ensure the adaptation of Polish commercial law to the then European law and in what direction the Polish commercial companies law should be modernized.

Recently, prof. Józef Frąckowiak⁵ and prof. Andrzej Szajkowski⁶ have drawn attention to the need to undertake research, and then carry out legislative work in the field of ensuring consistency of provisions of normative acts of broadly understood civil law. I also share the view that it is necessary to complete the adjustment (adaptation) process of the Commercial Companies Code to the Civil Code and to introduce appropriate modifications and corrections ensuring necessary consistency of legal regulations of those codes. The issue is by no means easy and requires further research. It should also be noted that a similar problem occurs with the Family and Guardianship Code. A proper synchronization of the Commercial Companies Code and the Family

⁴ In accordance with Article 630 CCC, until the regulations concerning the business name and commercial power of attorney were issued (i.e. until the date of entry into force of the amendment of the Civil Code of 14 February 2003 (Dz. U. (Journal of Laws) No. 49, item 408). Commercial Code provisions regulating both of these institutions were maintained in force.

⁵ Commenting on the changes introduced by the amendment of the Civil Code in the Act of 14 February 2003 (ibidem), professor Frąckowiak strongly emphasizes the importance of that amendment. “Its entry into force will make the unity of civil law, so far declared only formally to a great extent, acquire clearer shapes. The Civil Code is becoming the basic regulation for all entrepreneurs”, Cf. Frąckowiak, J., *Instytucje prawa handlowego w kodeksie cywilnym*, “Rejent” 2003, No. 6 (146), p. 17.

⁶ Cf. Szajkowski, A., *Postulat spójności Kodeksu spółek handlowych z Kodeksem cywilnym oraz Kodeksem rodzinnym i opiekuńczym*, in: Pisuliński, J. and Zoll, F. (eds.), *Rozprawy z prawa cywilnego, własności intelektualnej i prawa prywatnego międzynarodowego. Księga pamiątkowa dedykowana prof. B. Gawlikowi*, Warszawa 2012; Nita-Jagielski, G., *Dylematy spójności Kodeksu spółek handlowych z Kodeksem cywilnym oraz Kodeksem rodzinnym i opiekuńczym – konferencja naukowa dla uczczenia 40-lecia pracy naukowej Profesora Andrzeja Szajkowskiego w INP PAN, Warszawa, 23 września 2014*, “Monitor Prawniczy” 2015, No. 7, special issue.

and Guardianship Code is necessary due to the fact that matrimonial property relations are primarily regulated by the Family and Guardianship Code, which in the basic range defines the legal status of both partners (shareholders) – spouses, personal and capital participants of commercial companies.⁷ At present there are too many uncertainties as regards the legal status of spouses of whom at least one is a shareholder of or participant in a commercial company, and the 2003 amendment of the Commercial Companies Code in this respect turned out to be a complete misunderstanding.

The analysis of the overlapping areas of the legal regulations of the Commercial Companies Code, the Civil Code and the Family and Guardianship Code has shown that the following groups of issues require a detailed study of purposefulness and of the range of the possible synchronization of the provisions of the aforementioned codes.

Firstly, concerning the nature, manner and scope of applying the freedom of contract principle in the area of legal regulation of commercial companies.

Secondly, the relation between the provisions of the Civil Code concerning acts in law, in particular contracts, and articles of association as well as the so-called invalidity of articles of association (Article 21 CCC).

Thirdly, the issues concerning the concept of an act in law and resolutions of a capital company body, invalidity of an act in law and challengeability of a resolution of the general meeting or of the general assembly of a capital company, as well as the explanation of the so called non-existent resolutions.

Fourthly, legal and financial status of the spouses where at least one of them is a participant in a commercial company.

Fifthly, synchronization of the provisions of the Act on the National Court Register concerning registration procedure with structural provisions of the Commercial Companies Code concerning the functioning of commercial companies. The application of adequate provisions of the Code of Civil Procedure is to be considered in this respect.

II. Three main positions appeared in the literature as for the nature, manner and scope of applying the freedom of contract principle (Article 353¹ CC) in the area of articles of association.

⁷ M. Nazar also strongly emphasizes it in *Komercjalizacja majątkowych stosunków małżeńskich w spółkach kapitałowych*, in: Kidyba, A. and Skubisz, R. (eds.), *Współczesne problemy prawa handlowego. Księga jubileuszowa dedykowana prof. dr hab. Marii Poźniak-Niedzielskiej*, Kraków 2007, pp. 201ff.

Prof. S. Sołtysiński takes a relatively liberal position in this matter.⁸ In his opinion “legislation concerning commercial companies is based on the principle of autonomy of the parties’ will as well as of the freedom of contract”,⁹ and the civil nature of relations in a commercial company, based on the concept of an agreement (Article 3 CCC), makes it possible to apply the freedom of contract principle (Article 353¹ CC).¹⁰

An entirely different position is taken by prof. M. Romanowski, who does not as a matter of fact question applying the freedom of contract principle to articles of association¹¹ but he emphasizes the problem of establishing the manner¹² and scope of its application.¹³ The author aptly states that the “axiology of commercial companies law does not reject the concept of the freedom of contract but requires its friendly adaptation considering the axiology of commercial companies law in general and the nature of particular types of companies as well as within a particular type of companies the nature of a particular company”. At the same time, however, taking the typological features of “classic” contractual relationships indicated by prof. E. Łętowska¹⁴ as a starting point and *lex contractus* measure, he states that articles of association may not be qualified as *lex contractus*. In his opinion, “commercial companies

⁸ A similar position is taken by S. Włodyka (in: Włodyka, S. (ed.), *System Prawa Handlowego*, Vol. 2, 2nd edition, Warszawa 2012, p. 39) who states that “while shaping the company relationship the shareholders are entitled to the freedom of contract. It is in this case, however, strongly limited, from the one side by the characteristics of a company relationship, and from the other – more importantly – by the fact that commercial companies provisions have to a great extent – as it has already been mentioned – *iuris cogentis* nature. There are two consequences of that. The first one is the principle of *numerus clausus* in commercial companies law”. (...) The other consequence is the limited admissibility of contractual modifications of normative types of contracts.

⁹ Sołtysiński, S., in: Sołtysiński, S., Szajkowski, A., Szwaja, J. (eds.), *Komentarz do Kodeksu Handlowego*, Vol. I, 2nd edition, Warszawa 1997, p. 79.

¹⁰ Cf. Sołtysiński, S., in: Sołtysiński, S. (ed.), *System Prawa Prywatnego*, Vol. 17A, 2nd edition, Warszawa 2015, p. 13.

¹¹ Romanowski, M., *Umowa spółki*, in: Sołtysiński, S. (ed.), *System Prawa Prywatnego*, Vol. 16, 2nd edition, Warszawa 2016, p. 178.

¹² Conducive to, i.e. to the benefit of the freedom of contract considering the nature of a particular type of a company as a legal entity and its internal and external relations.

¹³ The author is in favour of using this principle in accordance with the standard of special, not general competence.

¹⁴ Łętowska, E., in: Łętowska, E. (ed.), *System Prawa Prywatnego*, Vol. 5, 2nd edition, Warszawa 2013, pp. 10–11.

law, in contrast to contract law is neither democratic nor “self-serving” nor based on the principle of self-determination; as a result of that, it demonstrates neither the feature of “sovereignty” nor “self-government” which characterize *lex contractus*”.

I take a middle-of-the road (intermediate) position on this matter. In my opinion, “Article 353¹ CC provides a foundation for using the freedom of contract by parties to articles of association – through supplementing or modifying statutory solutions in the area not regulated by the lawmaker by *iuris cogentis* provisions.¹⁵ At the same time, however, in view of the differences in axiology of commercial companies law in comparison with “classic” law of obligations – especially because of the need to provide protection to other market participants, in particular company’s creditors as well as sometimes the shareholders or partners themselves, particularly minority shareholders – this rule is subject to greater restrictions with reference to articles of association resulting primarily from the law.¹⁶ It concerns especially those aspects of the establishment and functioning of the company that may affect the legal sphere of other market participants, that is because of the creative effect of making the articles of association which results in establishing an independent legal entity with legal capacity. In my opinion, these reasons justify to some extent the lawmaker’s interference in internal relations,¹⁷ whereas to a greater extent in those aspects of articles of association which are important in external relations.¹⁸

¹⁵ Tarska, M., *Zakres swobody umów w spółkach handlowych*, Warszawa 2012, p. 552.

¹⁶ Ibidem, p. 5.

¹⁷ It refers especially to a joint-stock company, whose participants, except for majority shareholders, usually have little influence on establishing the internal rules binding for the company or on defining the rights and obligations of particular bodies of a joint-stock company, including division of its competences in connection with the obligation to bear civil and penal liability (See Article 293, Article 299, Articles 480–481, Articles 483–484, Article 586 et seq. CCC).

¹⁸ It refers in particular to defining in each type of a company the rules of liability for its obligations, as well as the rules of efficient performance on behalf of the company. Cf. Tarska, M., op. cit, p. 93. Similarly Litwińska, M., *Typologia prawa spółek*, PUG 2001, No. 2, p. 6.

As it seems, prof. M. Romanowski's very firm position that commercial companies law constitutes the opposite of *lex contractus*¹⁹ may be regarded as too categorical. The view of that Author that "axiology of commercial companies law does not contain a permission to create *legis contractus* by the shareholders or partners themselves"²⁰ may be shared – with the reservation, however, that it is about the scope and manner of making law that is conferred to the parties of a ("classic") obligation relationship. As a matter of fact, except for the regulations "imposed" by the lawmaker, the Commercial Companies Code regulates a lot of issues worded in relatively binding provisions, thus being the lawmaker's "proposal" that the parties to articles of association may accept, modify or even reject. Moreover, as part of a legal relationship of each of six types of companies, a certain sphere of contractual freedom not covered by statutory regulations at all remains, thus left to the free decision of founders (later – shareholders or partners) of a company.

III. In terms of the relation of the Civil Code provisions concerning acts in law, in particular contracts, to articles of association the matter is relatively simple because, as a rule, there are no doubts that the aforementioned provisions of CC apply broadly – and directly – to articles of association. There are, however, some areas of the provisions that concern making, functioning and terminating articles of associations where the application of the general CC provisions on contracts remains limited to some extent. It concerns, *inter alia* the nature of articles of association that has long been emphasized in literature and comes down to creating a new entity. The making of articles of association results in creating not only a legal relationship of a company but also a new civil law entity that, as a rule, enters a lot of legal relationships with other entities, creates permanent legal structures and sometimes has significant assets as well as liabilities (debts). For this reason, a special regulation for dissolving

¹⁹ In view of S. Sołtysiński (in: Sołtysiński, S. (ed.), *System Prawa Handlowego*, Vol. 17A, p. 23), this opinion does not find a normative and functional justification. Article 2 sentence 1 CCC refers to *inter alia* general clauses of the Civil Code, together with Article 353¹ CC, which is perceived by the majority of scholars as a ground of freedom of contract also with reference to commercial companies relationships (Cf. S. Włodyka, in: Szumański, A. (ed.), *System Prawa Handlowego*, Vol. 2A, 3rd. edition, Warszawa 2019, p. 47 and the following ones: Szumański, A., *Ograniczona wolność umów w prawie spółek handlowych*, "Gdańskie Studia Prawnicze" 1999, No. 2, pp. 411, 415, 417; Okolski, J., Modrzejewski, J., Gasiński, Ł., *Natura stosunku korporacyjnego*, "Przegląd Prawa Handlowego" 2000, No 8, p. 6ff).

²⁰ Romanowski, M., op. cit., p. 219.

a company by a registry court included in Article 21 CCC – which in fact in the vast majority of cases *de iure* means the court's dissolving the articles of association – contains so many separate solutions that may indeed seem controversial but are very pragmatic and axiologically fully acceptable.

The question arises, however, about the exact scope of the previously mentioned restrictions adapted in the Commercial Companies Code, restrictions of the application of the Civil Code concerning acts in law and whether they (the restrictions) are justified. Those issues require an in-depth analysis. It is also necessary to find a satisfactory solution to the problem, pointed out by prof. M. Romanowski, that together with specifying the scope of application of the freedom of contract in the area of commercial companies law (Article 353¹ CC) one needs to take in account a directive stipulating that articles of association may not be qualified as *lex contractus*.

IV. In the Civil Code and the Commercial Companies Code the issues of defectiveness, in particular, invalidity of acts in law and challengeability, including invalidity of resolutions of bodies of capital companies were regulated according to different legislative concepts and, as it seems, it is not possible to ensure consistency of both normative acts through appropriate unification of those different regulations. The main reason for this situation consists in the need to ensure the safety of legal transactions. Commercial companies running business activity, as a rule with multiple members, function in certain economic realities in which stabilization of economic relations and the time factor play a special role. And the same reasons which speak for recognizing the legal existence of companies with the highest degree of defectiveness (e.g. absence of articles of association or unlawful company's objects – cf. Article 21 § 1(1) and (3) 3 CCC) decided about the adoption – first in the Commercial Code and next in the Commercial Companies Code – of the concept of depriving defective resolutions of legal effects by challenging them.²¹

Nevertheless, both the Commercial Code concerning the aforementioned issues of challengeability and defectiveness of resolutions, as well as the solutions adopted in this regard in the Commercial Companies Code, raise some doubts and reservations, which is evidenced by abundant literature. As it seems,

²¹ Cf. Frąckowiak, J., *Uchwała zgromadzenia wspólników spółki kapitałowej jako czynność prawna wewnątrzkorporacyjna*, "Przegląd Prawa Handlowego" 2018, No. 9, pp. 19–26.

these issues have been better regulated in Article 42 Cooperative Law,²² which expressly allows (in Article 42(9)) the right to bring an action for declaring non-existence of a resolution of the general assembly.²³

Another issue, especially important for the commercial companies law, involves the so called resolutions *non existens*. Their identification and existence itself is denied by some scholars although in practice there are attempts to qualify different kinds of alleged resolutions – acts that are not resolutions at all in the meaning of the Commercial Companies Code – as challengeable resolutions, as they do not bear the characteristic features²⁴ of a resolution required by law: they are neither a formal statement of company’s participants (shareholders) constituting the company’s resolution-making body nor a statement made as a result of company’s participants voting – they are only some kind of osten-

²² Act of 16 September 1982 Cooperative Law, Dz. U. (Journal of Laws) of 2018, item 1285), Article 42 § 1. Resolutions of the general assembly are binding for all members and bodies of the cooperative. § 2. A resolution contrary to the law is invalid. § 3. A resolution contrary to the provisions of the statute, contrary to fair dealings or compromising the interests of the cooperative as well as aiming to harm its member may be appealed against before a court. § 4. Each member of the cooperative or the management may bring an action to repeal the resolution. However, the right to appeal against the resolution on the exclusion or removal of a member is given only to the excluded or removed member. § 5. If the management board brings an action the cooperative is represented by a representative appointed by the supervisory board, and the cooperative in which the supervisory board is not appointed, the representative appointed by the general assembly. In case of not appointing a representative the court competent to hear the case appoints a guardian for the cooperative. § 6. The action for repealing the resolution of the general assembly shall be brought within 6 weeks from the date of the general assembly being held, if, however, the action is brought by a member absent at the general assembly as a result of its faulty convening – within 6 weeks from the date on which the member learnt about the resolution, no later than a year from the date the general assembly was held. § 7. If the act or statute require notifying the member about the resolution, the 6-week period referred to in par. 6 runs from the date of that notification made in the way indicated in the statute. § 8. The court may not allow the expiry of the time period referred to in par. 6 if maintaining the resolution of the general assembly in force would cause severe effects for a member and the delay in appealing is justified by the very exceptional circumstances and is not excessive. § 9. The court ruling determining non-existence or invalidity of the resolution of the general assembly or repealing the resolution is legally binding for all members of the cooperative and all its bodies.

²³ Cf. Koch, A., *Podważanie uchwał zgromadzeń spółek kapitałowych*, Warszawa 2011, pp. 150–151.

²⁴ Cf. Radwański, Z., in: Radwański, Z. and Olejniczak, A. (eds.), *System Prawa Prywatnego*, Vol. 2, 3rd edition, Warszawa 2019, p. 447 as well as the reasoning to the resolution of the Supreme Court of 2 February 1994, III CZP 181/93: “if the resolution is, as a matter of fact, not a resolution but only has an ostensible nature of a resolution, i.e. if it was passed by unauthorized persons, Article 240 of the Commercial Code may not apply”, OSN 1994, No. 9, p. 15.

sible resolutions.²⁵ In the Commercial Companies Code there is no legal ground for accepting a presumption that every act about which somebody says that it is a resolution of a constituting body of a capital company is a resolution that can be appealed against in the procedure specified in the Commercial Companies Code. As a result, in accordance with Article 6 CC such a person will have to prove *in casu* that a particular act is a resolution at all because the burden of proving a fact lies with the person who derives legal effects from this fact. The fact that we are dealing with a defective resolution must be proved by persons or bodies questioning the legitimacy (validity) of the resolution appealed against, who are moreover authorized, in accordance with an adequate provision of the Commercial Companies Code, to bring an action for repealing this resolution or declaring it invalid.

As for the issue of non-existent and unlawful resolutions, the position taken by the Supreme Court in a decision of 25 August 2016²⁶ seems right and worth quoting: “Non-existent resolutions differ from unlawful resolutions in such a way that because of their drastic, extreme degree of defectiveness they do not cause any legal effects *ab initio*. A resolution affected by such a significant degree of defectiveness does not exist and has never existed. With reference to non-existent resolutions there is no need to obtain a judgment stating the circumstance of their non-existence on the ground of Article 189 of the Code of Civil Procedure.”

V. Synchronization of the provisions of the Commercial Companies Code and the Family and Guardianship Code regulating the legal situation of spouses – participants in commercial companies is a very urgent matter.

Briefness of the provisions of the Commercial Companies Code as for the legal status of spouses in commercial companies as well as the regulation of legal and property relations between spouses resulting from participation and co-participation in a commercial company adopted in Article 31-46 FGC create a lot of significant misunderstandings in practice. There are completely basic doubts as for which of the spouses has the rights of a shareholder if at least one of them joins the company; what is more – are these rights of a shareholder or only rights of a co-shareholder of a commercial company?; also, what is the scope of authority that each spouse may perform independently in such a situation? The last

²⁵ Cf. Szajkowski, A., *O metodzie badania prawa handlowego*, in: Frąckowiak, J. (ed.), *Kodeks spółek handlowych po 15 latach obowiązywania*, Warszawa 2018.

²⁶ V CSK 694/15, Legalis no. 1514858.

issue is of utmost importance. It cannot be assumed – although the unclear provision in Article 31 FGC suggests it to some extent – that at the moment of creation of statutory matrimonial joint property it covers not only items acquired “by both spouses or by one of them” to their joint property but also items acquired by one spouse for the account of private property. The aforementioned issue has not been clearly regulated in the provisions on the statutory system of matrimonial property rights. It is difficult to assume that the lawmaker shares the view that on entering into marriage each spouse loses the ability to act independently: acquiring items for private account, in exchange for certain assets, or as debt. This problem is essential for determining the binding legal status of spouses associated with participation in a commercial company.

Moreover, the provision of Article 183¹ CCC (introduced by the December 2003 amendment), completely defective and containing internal contradictions, needs to be repealed.

VI. Another difficult, though necessary task is to ensure proper synchronization of the provisions of the Act on the National Court Register concerning the registration procedure – most of all with common sense, and then also with structural provisions of the Commercial Companies Code regulating the functioning of commercial companies. The problem concerns i.a. the registry court’s making entries in the register following events which produce specific legal effects according to the provisions of the Commercial Companies Code, e.g. entry into or removal from the register of persons holding the right to represent a company. This issue is essential from the point of view of both the company (and shareholders) and its counterparties (including creditors), as well as members of the company’s management board. The topic has not been duly regulated, thus producing potential threat to the interests of all stakeholders.

Capital companies registration regulations must contain a mistake in the system. There are no effective measures of prevention against “hostile takeovers” of the management board of a limited liability company by persons from outside the company, e.g. persons interested in quick access to company’s bank accounts.

A resolution on changing the company’s management board is like giving a stranger a key to a safe. The new management board gets access to all bank accounts, has them at their disposal, and if, as a result of a defective, previously prepared or non-existent resolution, an entry into the register of new members

of the management board occurs (unauthorized persons *de iure*) – on the basis of a court extract obtained without difficulty, they (new members of the management board) may take hundreds of millions of zlotys out of the company in one day. The current, insufficient regulation in the Commercial Companies Code and the act on the National Court Register seems striking in terms of entering in the register changes in the composition of the management board. It does not contain necessary measures to protect the interests of the company and its shareholders as well as existing management board members and is based on crude formalism.

In accordance with the current regulations the registry court does not verify whether the documents submitted together with the application for an entry in the register by persons claiming to be new management board members are actually documents coming from that company, and whether these persons are duly appointed management board members. The Supreme Court jurisdiction is going in a similar direction. For example, in one of its resolutions the Supreme Court states that a situation where a resolution has not been passed at all and a situation where there is indeed an appearance of passing it but in accordance with the views consolidated in the Supreme Court jurisdiction and in literature it must be considered non-existent should be assessed differently. In the first situation there is a possibility of the registry court acting *ex officio*, in the second one – the only fundamental document for the registry court is a final court judgment stating non-existence of a resolution.²⁷

The abovementioned statements of the Supreme Court may be considered well grounded in case of a real, typical dispute over the legitimacy (validity) of a resolution of the general assembly. They are, however, not acceptable for the so called non-existent resolutions or overt frauds connected with preparation of forged company documents.

These issues require, in my opinion, in-depth analysis and adequate amendments in the applicable commercial companies law and regulations concerning the National Court Register.

VII. The analysis of the subject-matter addressed in this study reveals an issue of the absence of necessary synchronization of the Commercial Companies Code with the Civil Code and the Family and the Guardianship Code, which

²⁷ Resolution of the Supreme Court – Civil Chamber of 4 June 2009, III CZP 30/09.

has been raised by A. Szajkowski,²⁸ J. Frąckowiak,²⁹ and M. Nazar³⁰ from many years. This mostly results from the legislator's failure to ensure the actual unity of civil law,³¹ since the entry into force of the Civil Code, in its different segments from the legislative side. As A. Szajkowski³² accurately concludes, it is undoubtedly urgent and necessary to ensure proper coherence of legal regulations of the CCC with the CC and the FGC, though implementing this task is certainly not an easy thing to do. Therefore, initiating in-depth research and an appropriate scholarly debate on this topic is well-grounded and necessary.

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²⁸ Szajkowski, A., *Postulat spójności...* See also: Nita-Jagielski, G., op. cit.

²⁹ See Frąckowiak, J., *Kodeks spółek handlowych. Studia i materiały*, Poznań-Kluczbork 2001, pp. 251–271. See also Frąckowiak, J., *Ustawodawstwo dotyczące przedsiębiorców pod rządami jedności prawa cywilnego*, "Przeгляд Prawa Handlowego" 2000, No. 11.

³⁰ See also Nazar, M., in: Kidyba, A. and Skubisz, R., (eds.), *Komercjalizacja majątkowych stosunków małżeńskich w spółkach kapitałowych*, w: *Współczesne problemy prawa handlowego, Księga jubileuszowa dedykowana prof. dr hab. Marii Poźniak-Niedzielskiej*, Kraków 2007, p. 201ff.

³¹ Szajkowski, A., *Deklarowana jedność prawa cywilnego*, in: Dańko-Roesler, A. et al. (eds.), *Ius est ars boni et aequi: księga pamiątkowa dedykowana profesorowi Józefowi Frąckowiakowi*, Warszawa 2018.

³² See Szajkowski, A., *Postulat spójności...*, p. 558.

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