

LEGAL CAPACITY AND OTHER CAPACITIES OF STATUTORY PERSONS

Doctoral dissertation by mgr Agnieszka P. Regiec

SUMMARY

The main goal of the dissertation is to explain the legal position of the organizational units not being legal persons, which have been granted the legal capacity by virtue of statutory law (art. 33¹ k.c.) in order to clarify the interpretational discrepancies regarding the capacity to perform acts in law, capacity to be a party in civil proceedings and capacity to perform actions in civil proceedings. The Civil Code amendment which added the above-mentioned art. 33¹ k.c. intended to systemize the subjects of civil law relationships. Article 33¹ k.c. allows to apply provisions on legal persons to the organizational units accordingly. The wording of the article creates uncertainty and is a source of heated discussion amongst scholars. Moreover, art. 33¹ k.c. provides subsidiary liability of the members of the unit for obligations of the unit if this unit becomes insolvent.

Doctoral dissertation aims at verifying the following hypotheses:

- 1) Organizational units not being legal persons which have been granted the legal capacity by virtue of statutory law shall be named statutory persons.
- 2) In order to be treated as a statutory person, a unit has to be granted legal capacity by a statutory provision.
- 3) Statutory persons have legal capacity. Legal capacity cannot be restricted based on the reason for which the unit was created. Current Civil Code regulations do not provide the so called special legal capacity.
- 4) Based on the fact that provisions on legal persons shall accordingly apply to statutory persons, statutory persons have the capacity to perform acts in civil law.
- 5) Statutory persons have tort capacity, based on applying art. 416 k.c. accordingly.
- 6) The following units are statutory persons: commercial partnerships, capital companies under organization, commonhold, common association. The legal position of the main branch of a foreign insurance company and a foreign reinsurance company is highly disputed.

Dissertation consists of the introduction, seven chapters and conclusions, which are logically connected to one another. The first chapter discusses all common denominators regarding being a legal entity in the private law as well as applicable to all statutory persons. The second chapter reflects American approach to the concept of legal entity. The following chapters address each potential statutory person separately. After a careful examination, throughout the dissertation the term "statutory person" was applied.

The second chapter covers the topic of legal entity in the United States of America in greater detail. Firstly, the general aspects of American legal system are being described. Secondly, the chapter reflects the theoretic concepts covered in the first chapter. The significance of the comparative analysis is based on the tendencies observed within the European countries regarding changes within commercial law.

The third chapter addresses Polish commercial partnerships. As an example of statutory persons, commercial partnerships are the least disputable among scholars. Additionally, historical analysis of the legal position of commercial partnerships provides a solid background for other statutory persons. One of the crucial aspects of this chapter is the analysis referring to the capacity of performing acts in private law. In particular, the possibility of applying the so called "theory of administrative bodies" to the statutory persons accordingly is being considered. Most of the theoretical aspects described within this chapter would be reflected in the following chapters of the dissertation.

The fourth chapter examines capital companies in organization as statutory persons. When their internal structure and method of regulation are taken into account, they present a strong resemblance to commercial partnerships. Furthermore, a few important issues are being discussed – the beginning of existence of the company in organization and the moment when a company in organization becomes the actual capital company. In terms of model of representation, the theory of administrative bodies could be applied.

The fifth chapter comprises of a thorough analysis of the commonhold. It is the longest chapter describing a statutory person, which allows for a detailed explanation of the judiciary rulings as well as the ideas presented by scholars. A wider context is being presented by analyzing the structure of the financial assets of the commonhold.

The sixth chapter is dedicated to a common association. The importance of the common association lies within the phrasing of the article 40 par. 1a, which is a descriptive equivalent of legal capacity. The wording is coherent within the structure of commercial partnerships and

capital companies in organization. Moreover, similarly to other statutory persons, the rules of representation require deeper analysis.

The last, seventh chapter consists of the description of the main branch of foreign insurance company and main branch of foreign reinsurance company. The legal position of this organizational unit is the most problematic due to the fact that they are a separate parts of the foreign entrepreneurs. At the end of each chapter, several reflections about each of the organizational units are being presented.

Conclusions are the last part of the dissertation. Broad aspects of all statutory persons are highlighted. The importance of changes within the regulations *de lege ferenda* is visible by referring to each of the statutory persons separately and by discussing the similarities of all the statutory persons. The scope of the dissertation allows for further and more detailed research on both theoretical and practical aspects of the legal capacity in private law.

28.02.2019 r.

Agneska Regiec