

SUMMARY

PhD thesis entitled *“Acting without authorisation and in excess of authorisation by a body of a capital company, a cooperative and an investment fund”* focuses on the issues of defective representation of legal persons in concluding agreements.

In contemporary legal transactions, there is a preponderance of legal actions, in particular contracts, performed with the participation of legal persons who are an artificial construction equipped with the capacity to perform legal actions only by the will of the legislator. The indicated mechanism of functioning in legal transactions is manifested in the institution of representation of legal persons.

On 1 March 2019, an amendment to the Civil Code came into force, by virtue of which the content of Article 39 of the Civil Code, which regulates the consequences of the operation of a “false body” of a legal person, was changed.

Prior to the amendment, the provision did not refer to the validity of an amendment concluded by an entity acting as a body of a legal person without authorisation or in excess of the scope of authorisation. In the previous legal status, the provision referred only to the contractor's claims against a person who acted without authorisation or in excess of the scope of authorisation.

In its previous wording, Article 39 of the Civil Code did not determine whether an agreement concluded by a false body in excess of authorisation was an absolutely invalid legal act, a non-existent act or an act subject to suspended ineffectiveness.

By virtue of the amendment in force from 1 March 2019, the possibility of confirmation by a legal person of an act performed by an entity acting as a body of the legal person without authorisation or in excess of the scope of authorisation has been regulated. This amendment corresponds to the regulation concerning a false proxy regulated in Article 103 of the Civil Code.

The introduced amendment does not resolve many theoretical and practical problems which are important for business trading. The new legal status still does not establish a uniform principle which would allow to determine the consequences of actions of improperly represented legal persons.

The essence of the research problem comes down to the question of what elements of the legal system affect the reconstruction of the content of the legal norm resulting from the

current wording of Article 39 of the Civil Code adequately to the various forms of legal persons in Polish law, such as capital companies, cooperatives, investment funds.

The amendment undermines the widespread popularity of the organ theory for explaining any mechanism of functioning of legal persons in Polish law. A concept which is opposing and different to the organ's theory is the theory of statutory representation.

In the dissertation, a research hypothesis was formulated, according to which the theory of statutory representation allows to resolve the theoretical and legal issues regarding the sanctions for acting without authorisation or in excess of authorisation by a purported body of a capital company, cooperative or investment fund. The confirmation referred to in Article 39 of the Civil Code constitutes an element of a legal act not yet performed in the form of a missing declaration of will submitted by a duly represented legal person. Therefore, a sanction under Article 39 of the Civil Code should be defined as a sanction of suspended validity of the legal act, and not as a sanction of suspended ineffectiveness. The norm resulting from Article 39 of the Civil Code indicates a legal mechanism of attributing a declaration of will to a legal person and provides for the requirement of consistent declarations of will of the parties to the agreement obligatory for a legal act to be valid.

Keywords: legal persons, false body, the organ theory, the theory of statutory representation, capital companies, cooperatives, investment funds, a sanction of suspended validity