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Special Representatives of Companies in Disputes with the Company

Szczególni pełnomocnicy spółek kapitałowych w sporach ze spółką

ABSTRACT

The study provides an analysis of the status of representatives in disputes with the company and, consequently, of the rules of representation in those disputes. The research problem addressed herein is based on the analysis of Article 210 § 1 and Article 253 of the Polish Code of Commercial Partnerships and Companies (CCPC). These rules govern issues related to the occurrence of disputes with the company and, in particular, the problem of the participation of the company's representatives in those disputes. It should be clear that power of attorney plays a special role in the regulation of the Code of Commercial Partnerships and Companies. It is also widely applicable not only in the classic representation of entities or persons within the company, but also of the company itself. A representative is granted a special status due to the transactions in which he participates. One should also keep in mind the situations where a representative represents the company in classical activities besides Articles 210 or 253 CCPC. In that case, the representative's authorisation is "activated" by the body usually having the power to do so (the management board) or by other representatives (statutory representatives or representatives appointed under a power of attorney, if the conditions laid down in Article 106 of the Polish Civil Code are met). Another situation is when they are appointed by a meeting of shareholders or partners (Articles 210 and 253 CCPC). Another feature of the special power of attorney is the use of it in disputes and not in legal transactions. It can therefore be concluded that the use of the word "representative" in the context of the provisions of the Polish Code of Commercial Partnerships and Companies may be of particular importance.

Keywords: power of attorney; representative; company; disputes

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INTRODUCTION

The issue of disputes with a company, including the issue of the status of special representatives of companies, is something more than merely the problem of the participation of bodies, partners or liquidators in disputes as the other parties. The issue is more complex due to the rules of representation in these disputes. The most essential provisions for the issue discussed herein are Article 210 § 1 (and Article 379 § 1) and Article 253 (and 426) of the Code of Commercial Partnerships and Companies.[1] These provisions have a similar but not identical content.[2]

So I disregard the use of the logical disjunction "or" in Article 210 § 1 CCPC and the exclusive disjunction "either/or" in Article 379 § 1 CCPC, which may be important from the point of view of defining the catalogue of people authorized to conclude contracts with members of the management board.[3] A similar question concerns Articles 253 and 426 CCPC – a reference to the shareholders' resolution and, in the second case, to the general meeting of shareholders.

The above-mentioned provisions concern several issues related to the occurrence of disputes with the company. This study discusses a fragment of these issues, namely the problem of the participation of the company's representatives in these disputes. To make the considerations easier, which will in fact lead to similar conclusions in relation to both types of companies, the comments are focused first on Article 210 CCPC, and then on Article 253 CCPC.

The Code of Commercial Partnerships and Companies also governs the issue of power of attorney in other regulations, e.g. in Articles 243 and 244. The first of these provisions introduces a prohibition of being a representative, while the second excludes the possibility of voting by persons who are already representatives. Problems arise, i.a., in Article 240 CCPC, from which the possibility for the shareholders to grant a power of attorney to participate in adopting resolutions may be derived. Also, Article 295 CCPC does not prevent the partners from acting through their representatives. As these issues concern the shareholders' representatives and not the company's representatives, they have been omitted in this study.

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[1] Act of 15 September 2020 – Code of Commercial Partnerships and Companies (consolidated text Journal of Laws 2020, item 1526), hereinafter: CCPC.

[2] A. Kidyba, [in:] *Kodeks spółek handlowych. Komentarz*, ed. A. Kidyba, vol. 2, Warszawa 2018, p. 426; judgement of the Supreme Court of 22 March 2012, V CSK 84/11, LEX no. 1214611.

[3] Cf. Z. Kuniewicz, *Wybrane zagadnienia dotyczące pełnomocnictwa do reprezentowania spółki kapitałowej w umowach z członkami zarządu*, „Rejent" 2006, no. 7–8, p. 86.

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THE ISSUE OF DISPUTES WITH THE COMPANY ARISING OUT UNDER ARTICLE 210 § 1

Article 210 CCPC provides that:

1) in a dispute between the company and a management board member (and in a contract with the management board member), the company may be represented by a representative (§ 1),
2) the representative is appointed by a resolution of the meeting of shareholders (§ 1),
3) the resolution on the appointment of a representative referred to in § 1, appointed in order to conclude a company agreement with a member of the management board, which is to be concluded using a model contract, may be signed using the model made available in an ITC system (§ 1^1).

The latter issue is partly of a purely technical nature, namely it confirms the possibility of granting a power of attorney using a model form where the resolution of the meeting of shareholders is to be adopted using such a model form. This only applies to three types of legal acts: the conclusion of a formation deed of general partnership, limited partnership or limited liability company between a limited liability company and a member of its management board. From the perspective of our interest, the only relevant fact is that, in view of the specific regulation of the granting of a power of attorney to enter into a contract with a member of the management board using a model, it will not be possible to appoint a representative to conclude any contracts with members of the management board other than the formation deeds mentioned above.[4] Since this paper is intended to define the nature of the power of attorney, the source of the representative's authority, the consequences of his action in disputes with the company, the question of power of attorney using model forms are disregarded herein.

The concept of dispute should be understood as any and all judicial proceedings, whether litigious or non-litigious.[5] In the case of litigious proceedings, it concerns both a situation where the company and a member of its management board are acting as opponents (on the parts of plaintiff and defendant) and a situation when they are acting towards each other in other relationships (an intervener acceding the other party).[6]

Two questions come to the fore: the fact that the representative may act in a dispute with the members of the management board and that he is appointed by

[4] A. Kidyba, [in:] *Kodeks spółek handlowych. Komentarz*, ed. A. Kidyba, vol. 1, Warszawa 2020, p. 1058.

[5] *Ibidem*, p. 1053.

[6] *Ibidem*. See also decision of the Supreme Court of 5 October 2011, II UZP 9/11, LEX no. 1096116.

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a resolution of the meeting of shareholders. In fact, in the most general respect, it is necessary to examine the essence of the power of attorney and its personal scope, i.e. who is the principal and who can be the representative. This will answer the fundamental question of whether we are dealing with a classic power of attorney, or rather a power of attorney of the company, how the power of attorney is granted, and how this legal relationship is terminated.

Certain issues have been subject to discussion between scholars in the field. The controversy was raised by the question of whether another member of the management board, or even one who is the other party to a contract concluded by the company, may have the capacity to be a party.[7] Personally, I consider such transactions admissible.[8] Another issue under discussion was whether it is possible to grant a power of attorney not only for the performance of a single act, but to represent the company on multiple occasions. It is not about a permanent representative,[9] but rather about the need to appoint a representative each time an action is performed.

The doubts that have been raised relate to a "permanent" power of attorney or a power of attorney granted for an indefinite period. It is difficult to defend the view that a power of attorney should be granted in each case, not only because there is no explicit rule in this respect, but also for practical reasons. Convening meetings of shareholders each time for granting a power of attorney is unnecessary due to costs and organisational problems. The admissibility of powers of attorney for an indefinite period is also supported by the functional interpretation.

If the representative is appointed for all disputes and contracts listed in Article 210 § 1 CCPC, without any time limitation, and additionally the resolution on the appointment of the representative uses the wording "disputes" or "contracts" rather than "dispute" or "contract", the admissibility of a permanent power of attorney should be assumed.

While the determination of a "permanent" power of attorney should be objected due to the manner and possibility of its revocation or expiry, the granting of a special power of attorney or a power of attorney for a specific category of legal transactions for an indefinite period should be accepted. It seems that Article 210 § 1 CCPC itself limits the freedom to grant powers of attorney in subjective terms,

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[7] As in Z. Kuniewicz, M. Leśniak, *Z problematyki prawnej pełnomocnictwa do reprezentowania spółki z ograniczoną odpowiedzialnością udzielonego na podstawie art. 210 § 1 k.s.h.*, [in:] *Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga jubileuszowa Profesora Józefa Okolskiego,* ed. M. Modrzejewska, Warszawa 2010; Z. Kuniewicz, *Wybrane zagadnienia…*, p. 77 ff.

[8] A. Kidyba, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 2, pp. 426–427; idem, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 1, pp. 1048–1049.

[9] An opinion against (but not quite convincing) was proposed by A. Szajkowski, [in:] S. Sołtysiński, A. Szajkowski, *Kodeks handlowy. Komentarz*, vol. 2, Warszawa 1996, p. 540, as cited in M. Dumkiewicz, S. Kidyba, *Charakter pełnomocnictwa udzielanego na podstawie art. 210 k.s.h. – glosa do uchwały Sądu Najwyższego z 30.01.2019 r., III CZP 71/18*, „Glosa" 2019, no. 4.

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and therefore also the objective terms. Besides, according to the principle *volenti non fit iniuria*, if the meeting of shareholders wishes to grant a power of attorney to enter into any contract with a management board member, no harm is done to the company. Therefore, I consider it perfectly admissible to grant a power of attorney to conclude multiple contracts.

The key issue for other detailed problems related to the power of attorney referred to in Article 210 CCPC is its legal nature. Pursuant to Article 95 § 1 of the Civil Code[10], a legal act may be performed by a representative (subject to statutorily defined exceptions or resulting from the properties of the legal act). According to the theory of representation, the representative makes his own declaration of intent, but he does it on someone else's behalf. Since the legal act is performed by the representative, the assessment of related legally significant issues, such as good or bad faith, defects in the declaration of intent, or liability should be made taking into account the circumstances occurring on the part of the representative.[11]

The acting representative is a direct agent. Article 96 CC points to the source of authority, which is, i.a., a statement of the represented person. In this case, we are dealing with a power of attorney.

The essence of the power of attorney is not who, on behalf of the represented person, makes a declaration of intent to appoint a representative, but that the source of authorization is the unilateral declaration of intent of the represented person.[12] A question arises who is represented within the scope defined by the provision of Article 210 § 1 CCPC. It should be assumed that the principal in the dispute is the company acting through its representative. The latter is a representative of the company and not its governing body, which clearly results from Article 210 § 1 CCPC. As a result, the authorization of such a representative remains valid regardless the fact of closing the meeting of shareholders and irrespective of changes in the composition of the shareholders.[13] In the absence of legal personality of a legal person's governing body, we cannot analyse a power of attorney for the body, but only the mechanism of granting the power of attorney with the participation of the body may be considered. As a rule, a power of attorney in a limited liability company (joint-stock company) is granted by the body authorized to represent it, i.e. the management board. The Code of Commercial Partnerships and Companies introduces exceptions in this respect, allowing representation by other bodies (e.g. the supervisory board – Article 210 CCPC). The Civil Code and the Code of Com-

[10] Act of 23 April 1964 – Civil Code (Journal of Laws 2020, items 1740, 2320), hereinafter: CC.

[11] K. Kopaczyńska-Pieczniak, [in:] *Kodeks cywilny*, vol. 1: *Część ogólna. Komentarz*, ed. A. Kidyba, Warszawa 2012, pp. 595–596.

[12] Z. Kuniewicz, S. Czepita, *Glosa do wyroku SN z dnia 15 czerwca 2012 r., II CSK 217/11*, OSP 2013, no. 9, item 94, p. 679.

[13] A. Nowacki, *Spółka z ograniczoną odpowiedzialnością*, vol. 1: *Komentarz do art. 151–226*, Warszawa 2017, p. 1289.

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mercial Partnerships and Companies provide for the possibility of representation by agents, including representatives or holders of general commercial powers of attorney. Pursuant to Article 106 CC, if it results from the content of the power of attorney, from the statute, or from the legal relationship which is the basis for the power of attorney, it is possible for the representative to grant further powers of attorney for the principal (i.e. the company). Provisions of the Civil Code on power of attorney could suggest that only a natural person may be a representative (Article 100 CC). However, nothing prevents a legal person or a statutory entity from being a representative.[14] There are additional problems which must be left aside at this point.

An exceptional solution for a limited liability company, but also to a particular extent (disputes and contracts with members of the management board), is the granting of a power of attorney by the meeting of shareholders, which should have the form of a resolution.

The status of a representative (Article 210 CCPC) is special and slightly differs from the classic power of attorney.[15] However, this must not lead to the conclusion that the representative referred to in Article 210 § 1 CCPC is not considered a representative, but a kind of a "corporate representative".[16]

It is true that the Code of Commercial Partnerships and Companies does not create any new construct of the power of attorney, which does not mean that it cannot be said to be a special representative, where the possible power of attorney includes a special power of attorney and a power of attorney for a specific category of legal transactions.[17]

In my opinion, this position is wrong. The fact that the declaration of intent to grant a power of attorney does not come from a classical body authorised for representation is of a secondary nature. Nor is it relevant, in view of a number of exceptions relating to the granting of power of attorney not only by the management board, that a power of attorney is granted by a body which does not have independent powers for "external" representation.[18] It is therefore incorrect to take the view that the power of attorney under Article 210 § 1 CCPC is an internal act

[14] More in A. Kidyba, *Prawo handlowe*, Warszawa 2020, p. 171 ff.

[15] Idem, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 2, p. 426.

[16] S. Sołtysiński, *System Prawa Prywatnego*, volt. 17B: *Prawo spółek kapitałowych*, ed. S. Sołtysiński, Warszawa 2010, pp. 479–483. Wrongly assessed by the Supreme Court in its judgement of 15 June 2012, II CSK 217/11, OSP 2013, no. 9, item 94 criticized in the commentary by Z. Kuniewicz and S. Czepita (*op. cit.*, p. 674). Rightly A. Opalski, [in:] *Kodeks spółek handlowych*, vol. 2A: *Spółka z ograniczoną odpowiedzialnością. Komentarz do art. 151–226*, ed. A. Opalski, Warszawa 2018, p. 1147.

[17] On this issue, see G. Kamieński, *Reprezentacja spółki z o.o. przez pełnomocnika powołanego na podstawie art. 210 § 1 k.s.h.*, Legalis; M. Dumkiewicz, S. Kidyba, *op. cit*.

[18] Z. Kuniewicz, S. Czepita, *op. cit.*, p. 676.

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of a company. This does not alter the view that the status of a representative under Article 210 CCPC has certain exceptional features and it can be considered a special representative. However, it is only by considering *in concreto* each type of power of attorney that we will be able to identify certain specific features which differ from the model set out in the Civil Code. For example, in one case it will be possible to grant further power of attorney (Article 106 CC) or to conclude a transaction with oneself (Article 108 CC) while in another it will not. Therefore, the most important thing for the representative is the source of the power of authority, i.e. the declaration of intent, and the fact that he is the representative. This will result in certain effects on legal transactions. There is undoubtedly a problem whether the sole statement of the represented person may be considered a source of authority for the representative (Article 96 CC). The question which arises is whether a resolution of the meeting of shareholders is a statement within the meaning of that provision. The issue is not so obvious. Problems arise even in the determination of the rules for the making of statements by the supervisory board. It is all the more debatable what the resolution of the meeting of shareholders is. Is it a declaration of intent or not? It is therefore irrelevant whether the supervisory board has primarily supervisory powers and that the meeting of shareholders is empowered to adopt resolutions.

The question is whether the meeting of shareholders has the power in specific cases to make a declaration of intent for the company. Undoubtedly, not every resolution can *expressis verbis* be considered a declaration of intent. A manifestation of will which expresses sufficiently the intention to cause a legal effect in the form of the establishment, amendment or abolition of a legal relationship must be regarded as a declaration of intent.[19] In the case of a decision to grant a power of attorney, there is undoubtedly a manifestation of will which seeks to establish the legal relationship of the power of attorney. If the power of attorney is revoked, it will be a question of abolishing the legal relationship of the power of attorney. At this point, a question arises whether the recipient (the representative) needs to make a declaration of intent. I think that the very adoption of the resolution and just reading it by the authorised person is sufficient. Therefore, it is not necessary for the prospective representative to make an additional declaration on the resolution, but it is important to express the intent to grant the power of attorney. The reading of this expression will be tantamount to a statement.

More importantly, Article 96 CC does not refer to a declaration of intent, but to a statement of the represented, which must be interpreted broadly. Therefore, in order to recognise the basis of the acquired power of attorney, in the classical sense, the resolution of the meeting of shareholders is sufficient. It is a statement of the represented, i.e. a statement of the company. It is therefore wrong to assume that the declaration of intent of the meeting of shareholders constitutes a declaration of

[19] A. Wolter, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1977, p. 246.

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intent of the company acting as a third party within the meaning of Article 63 CC.[20] The latter position has no legal basis mainly due to the mechanisms of action of governing bodies of the limited liability company, in particular the fact that a governing body cannot be considered a person.[21]

Concerning the subjective scope of Article 210 CCPC, the situation seems clear. The power of attorney is granted by the company acting through the meeting of shareholders, and the representative may be anyone who meets the criteria of being a representative. The only doubts relate to the granting of a power of attorney under Article 210 CCPC to a member of the management board even if he is the other party to the legal act. Such acts should be accepted and allowed where this does not contradict the essence of the contract being concluded.[22]

Nothing prevents a partner, also that voting on the appointment of a representative, from being the representative, either.[23] A representative may also be a holder of the general commercial power of attorney (Pol. *prokurent*).

Returning to the issue of the legal nature of the power of attorney, it is necessary to look at this issue from the perspective of Article 2 CCPC. As it has already been stated, there are no grounds for claiming that we are not dealing with a power of attorney as referred to in the Civil Code. It should be assumed that the use of the same-sounding term by the legislature has the same meaning regardless of the provision in which it is placed.[24] The term "power of attorney" used in Article 210 CCPC (and also in Article 253 CCPC) means a power of attorney within the meaning of the provisions of the Civil Code. Pursuant to Article 2 CCPC, the provisions of the Polish Civil Code are applied first directly, and only due to the nature of the corporate relationship should they be applied *mutatis mutandis* or not at all.[25] For example, Article 97 CC regulating the so-called statutory power of attorney will not apply in this case.[26] The nature of the legal construction of power of attorney regulated by Article 210 CCPC does not justify the complete exclusion of the application of the provisions of the Civil Code regarding the power of attorney.[27]

To answer the question about the nature of the power of attorney and its extent, Articles 98–108 CC should be analysed and the scope of their application defined. According to the *communis opinio*, the scope of application of Article 98 CC is

[20] J. Grykiel, *Glosa do wyroku z dnia 15 czerwca 2012 r., II CSK 217/11, OSNC nr 2/2013 poz. 27*, „Państwo i Prawo" 2014, no. 5, p. 136.

[21] A. Kidyba, *Prawo…*, pp. 143–145.

[22] A. Nowacki, *op. cit.*, p. 1286.

[23] *Ibidem*, p. 1289.

[24] J. Grykiel, *op. cit.*, p. 137.

[25] *Ibidem*, p. 138.

[26] A. Kidyba, J. Mojak, *Glosa do wyroku SN z dnia 17 grudnia 1985 r., III CRN 395/85*, „Palestra" 1988, no. 5, p. 127 ff.

[27] *Ibidem*.

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limited. Therefore, the possibility of granting a general power of attorney should be excluded.[28] Such power of attorney gives the authority to perform all actions falling within the scope of ordinary management. Because of the too broad scope and due to the specific nature and function of Article 210 § 1 CCPC, the possibility of granting special powers of attorney and powers of attorney for specific categories of transactions should be accepted.[29] The scope of authorisation for other types of powers of attorney is limited only to disputes (and contracts) between members of the management board and the company.

Thus, the application *mutatis mutandis* of Article 98 CC consists in excluding the possibility of granting one of the types of powers of attorney. Article 99 CC should also be modified in its application. Due to the exclusion of a general power of attorney, Article 99 § 2 CC does not apply. The provision of § 1 should also be "treated" in a special way. Namely, the provision of Article 99 § 1 CC, according to which if a special form of power of attorney is required for the validity of a legal transaction, the transaction should be concluded in the same form, does not apply to the appointment of a representative under Article 210 § 1 CCPC.[30] Furthermore, statements of specific shareholders made as part of the act of voting should be separated from the form of a power of attorney recorded in the minutes of the meeting of shareholders.[31]

The form of the power of attorney is determined by the specificity of Article 210 § 1 CCPC, as it refers to granting a power of attorney by a resolution of the meeting of shareholders, in particular when the resolution may be adopted by correspondence means. As an exception, it may be adopted orally, with the participation of shareholders or their representatives, if the deed of formation (articles of association) so provide. The form of the power of attorney cannot be the same as the form of the performed legal act. In the latter case, it will be in writing, while the adoption of a resolution takes place in a special correspondence procedure, unless the deed of formation (articles of association) provide otherwise.

As a rule, also Article 100 CC may be applied, which allows a person with limited capacity to perform acts in law to conclude an agreement with a member of the management board, although the sense of such a solution is questionable.

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[28] Resolution of the Supreme Court of 30 January 2019, III CZP 71/18, LEX no. 2612713; M. Dumkiewicz, S. Kidyba, *op. cit*.

[29] A. Opalski, *op. cit.*, p. 1148.

[30] As in A. Nowacki, *op. cit.*, p. 1293; J. Bieniak, M. Bieniak, G. Nita-Jagielski, K. Oplustil, R. Pabis, A. Rachwał, M. Spyra, G. Suliński, M. Tofel, R. Zawłocki, *Kodeks spółek handlowych. Komentarz*, Warszawa 2011, p. 794. Alternatively Z. Kuniewicz, M. Leśniak, *op. cit.*, p. 550; Z. Kuniewicz, *Wybrane zagadnienia…*, p. 84; K. Ryszkowski, *Forma pełnomocnictwa udzielonego na podstawie art. 210 § 1 k.s.h. na gruncie orzecznictwa Sądu Najwyższego*, „Przegląd Prawa Handlowego" 2021, no. 1, p. 33 ff.

[31] K. Ryszkowski, *op. cit.*, p. 36.

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For the power of attorney under Article 210 CCPC, also Articles 101–102 CC may be applied (see the comments further herein). On the other hand, Article 103 CC will not be applicable, so it will not be possible to confirm the concluded contract. Pursuant to Article 58 § 1 CC, due to the nature of Article 210 CCPC, its breach results in the absolute nullity of the act performed between the company and the management board.[32]

Articles 104–107 CC will be applicable. As stated before, the application of Article 108 CC, i.e. performing a legal act in a situation where the representative is a member of the management board, should also be accepted. However, a legal act concluded "with oneself" should be expressly admitted in the content of the resolution of the meeting of shareholders appointing the representative. The application of the second condition under Article 108 CC, namely the one stating that due to the content of a legal transaction, the possibility of infringing the interests of the principal is excluded. It seems that in some contracts (e.g. employment contracts) such a possibility of infringement of principal's interests is frequent, which will exclude the application of Article 108 CC.

In conclusion, it should be assumed that the differences between the special power of attorney under Article 210 § 1 CCPC and the "classic" power of attorney come down to the following:

> First, the principal is a governing body usually not authorized to decide on representation, and the source of appointing a representative is a resolution of the meeting of shareholders. Second, its scope in relation to other types of powers of attorney is limited only to contracts with a management board member and disputes between this member and the company. Third, the procedure of authorizing the attorney under Article 210 CCPC is of a special nature. Fourth, the form of the power of attorney granted by the meeting of shareholders is not subject to the rule set out in Article 99 § 1 CC.[33]

Another issue to be addressed is the question of the expiry of the power of attorney in Article 210 CCPC. We can point out several reasons for this. In accordance with Article 101 § 1 CC, the power of attorney may be revoked at any time, unless the principal has waived the revocation of the power of attorney for reasons justified by the legal relationship on which the power of attorney is based. Revocation of a power of attorney is a unilateral legal act.

The second reason for the expiry of the power of attorney may be the expiry of the time limit for which it has been granted. A solution whereby contracts for a given term of office of a member of the management board are admissible is not excluded. In such a case, the expiry of the specified period results in the termination

[32] A. Kidyba, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 2, p. 1051; J. Strzępka, E. Zielińska, *Kodeks spółek handlowych. Komentarz*, Warszawa 2015, p. 539 and the supporting case law referred to therein. Other opinion A. Opalski, *op. cit.*, pp. 1160–1161and the review of scholarly opinions presented to therein.

[33] A. Kidyba, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 2, p. 426.

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of the power of attorney. In accordance with Article 101 § 2 CC, the authorisation expires with the death of the representative. However, it may be stipulated in the power of attorney, that the representative is replaced by his heirs.

Article 101 § 2 CC refers also to the death of the principal. If the principal is a company, this should be understood as its dissolution. However, in this situation it is possible to make a reservation that the power of attorney does not expire because of the dissolution of the principal (the company), and that it is replaced by, e.g., the legal successors. Such a case can only occur when the company is transformed into another legal form.

As a side note, mention should also be made of the situation where the representative is not a natural person but a legal person or a statutory entity.[34] In such a case, the dissolution of such an entity should also be considered as the reason for the termination of the authorisation, subject to Article 101 § 2 CC.

Another reason for the expiry of the power of attorney may be the existence of circumstances which render him incapable of legal action. Thus, an incapacitated person completely loses his capacity to perform acts in law, and thus the power of attorney expires.

A legal event causing the expiry of the power of attorney is also the resignation of the representative.[35]

Article 61 CC states that the declaration of intent which is to be made to another person is deemed made when presented in such a way that the person could learn about its content. In view of the above, it is appropriate to consider whether the declaration of intent has been effectively made.

From the point of view of the effectiveness of a declaration of intent, it should be "communicated" to the person concerned. In accordance with the general rules of representation, the declaration should "reach" the person authorised to represent the company, i.e. the management board, holder of a general commercial power of attorney or the representative. In the event of resignation as a representative due to an action of the meeting of shareholders in terms of settling disputes with the members of the management board, the effectiveness of the delivery of the statement to the shareholders or their representatives should also be considered.

In addition, there may be a problem of revoking a declaration of intent to resign from being a representative of the meeting of shareholders. The provisions of the Civil Code shall also apply, namely Article 61 § 1 sentence 2. The revocation of a declaration made to another person shall take effect if it reached the addressee concurrently or prior to that declaration. The revocation of a declaration of intent may be effected in any form and by any means. The withdrawal of resignation should be made by a statement. By withdrawing the declaration of intent made

[34] Cf. K. Kopaczyńska-Pieczniak, *op. cit.*, p. 623.

[35] *Ibidem*, p. 629.

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before it has "reached" the addressee, the effects of the first declaration are removed. Consequently, there is no need for an additional declaration of intent, and the withdrawal means that this statement is in fact non-existent.

The above considerations do not completely address all the problems related to the application of Article 210 § 1 CCPC to disputes with the company. The issues already explained in the scholarly opinion or case law have been disregarded herein. Moreover, the problem of acting as a representative who is a legal person or a statutory entity, requires broader consideration, but this is a matter for other studies.

THE ISSUE OF DISPUTES WITH THE COMPANY ARISING OUT UNDER ARTICLE 253 CCPC

The second provision relating to the special power of attorney is Article 253 CCPC (Article 426 CCPC).

Another departure from the principle that the company is represented by its management board, expressed in Article 253 CCPC, has a different justification than for Article 210 CCPC. The point is that, as a rule (with the exception for a single-shareholder company), management board members are not the other party to a dispute or contract in relations with the management board. In the case of Article 253 CCPC, it is only about a dispute involving an action brought to court by those entitled, defined in Article 250 CCPC, for repealing a resolution or declaring a resolution invalid. It is assumed that in such a dispute, as referred to in Article 253 CCPC, the defendant is the company, while the plaintiff may be the governing bodies or persons referred to in Article 250 CCPC. Article 253 CCPC is primarily intended to avoid the company being represented by the same persons on two sides of the trial and a situation of being a representative of the plaintiff and the defendant at the same time.

Article 253 CCPC refers to a case when the company is sued and the defendant company is supposed to be represented by its management board. If it were to happen that the plaintiff is also the management board, a situation must be prevented in which the board acts as a representative of both the defendant and the plaintiff, and thus the principle of adversarial proceedings is violated. Thus, the company is protected in proceedings for the annulment or declaration of invalidity of a resolution.

It is assumed that Article 253 CCPC does not apply if the plaintiff is a shareholder who has an independent right to challenge a resolution of the limited liability company[36] unless the shareholder is also a member of the management board of

[36] Judgement of the Supreme Court of 3 February 2017, II CSK 304/16, LEX no. 2284177.

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the defendant company.[37] However, the management board may not then act as a plaintiff's representative.

The basic provision governing the rules of representation with the participation of a member of the management board is Article 210 CCPC. However, Article 253 CCPC is a *lex specialis* in relation to Article 210 CCPC. In a dispute between a management board member and the company concerning the repeal or declaration of invalidity of a shareholders' resolution, Article 253 § 2 CCPC shall apply, and not Article 210 CCPC. In such a situation, representation by another governing body (management board, supervisory board) is out of the question, as it may be exercised only by a representative appointed by a resolution of the shareholders or by a court-appointed administrator.[38]

The legal nature of the power of attorney referred to in Article 253 CCPC may be compared to the power of attorney referred to in Article 210 CCPC, so there is no need to discuss this issue again (cf. above). However, there are certain differences, compared to the power of attorney under Article 210 CCPC. This does not change the general assessment that we are dealing with a special power of attorney, but still based on the provisions of the Civil Code.

Both Article 210 CCPC and Article 253 CCPC have distinctive elements. Under Article 253 CCPC the power of attorney is granted by the shareholders adopting a resolution, whereas under Article 210 CCPC such power of attorney may be granted only by the meeting of shareholders. Therefore, there are more possibilities of adopting a resolution under Article 253 CCPC since a representative may be appointed by a decision based on Article 227 CCPC. Another difference is that in the case of Article 210 CCPC there is a choice between the representative and the supervisory board when disputes arise (and when contracts are concluded). In the case of Article 253 CCPC, there is a three-stage gradation.[39] The company is represented by a representative appointed by the shareholders. Subsequently, when there is no such representative, the company shall be represented by the management board. If the management board is unable to act and there is no shareholders' resolution to appoint a representative, the court shall appoint an administrator for the company.

The objective scopes of the powers of attorney under Articles 210 and 253 CCPC differ. The first case covered contracts with management board members and disputes between them and the company, while the second case concerned only disputes, and to a limited extent. These are only disputes concerning the annulment

[37] Resolution of the Supreme Court of 22 October 2009, III CZP 63/09, OSNC 2010, no. 4, item 55.

[38] *Ibidem*.

[39] R. Pabis, [in:] *Kodeks spółek handlowych*, vol. 2B: *Spółka z ograniczoną odpowiedzialnością. Komentarz do art. 227–300*, ed. A. Opalski, Warszawa 2018, p. 575.

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or declaration of invalidity of shareholders' resolutions. From this point of view, the scale of the matters covered by Article 210 CCPC is far broader (cf. above).

Pursuant to Article 253 CCPC, a power of attorney may be granted for only one action[40] for the annulment or declaration of invalidity of a resolution, or for multiple actions of such character. Similarly to Article 210 CCPC, Article 253 CCPC is distinguished by the fact that it is a power of attorney to represent in judicial proceedings.

Undoubtedly, what both types of special powers of attorney under Articles 210 and 253 CCPC have in common is the fact that the appointing parties are the shareholders acting as a governing body (meeting of shareholders), and in the case of Article 253 CCPC (Article 227 § 2 CCPC) it is also shareholders who act. In both provisions, we have a specific purpose of appointing a representative and that both act on behalf of the company.

To establish that Article 253 CCPC is a *lex specialis* in relation to Article 210 CCPC, the scope of application of the former provision must be clarified. The defendant in a dispute about repealing or declaring a resolution invalid is always the company. The plaintiff may be a shareholder, the supervisory board, the audit committee and its individual members, as well as the management board (and its members). The management board will, however, find itself in a special situation, as it will have powers of representation, but only in accordance with the principles set forth in Article 201 CCPC ff.[41], if the action is brought by a shareholder, the supervisory board and audit committee or members of those bodies.

On the other hand, the management board has no right of representation if the action is brought under Article 250 CCPC *in corpore* or by its members. As already mentioned, this would lead to a conflict of interests and breach of the principle of adversarial procedure, which would prevent the management board from acting on behalf of the company. This is also how Article 253 § 2 CCPC should be understood. It refers to all situations where the management board is unable to act, but also, or perhaps above all, to the situation mentioned above. The situation when a shareholder is at the same time a member of the management board should be viewed analogically.[42]

In a situation where the plaintiff is a company represented by the management board and at the same time the defendant is the company, the management board cannot represent it. Therefore, a certain sequence has been established: a representative appointed by a resolution of shareholders, the management board – if it can act (e.g. the plaintiff is a shareholder or other bodies or their members), and

[40] As in J. Frąckowiak, [in:] *Kodeks spółek handlowych. Komentarz*, vol. 2, p. 689.
[41] *Ibidem*, p. 688.
[42] *Ibidem*.

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eventually, when the mentioned representatives cannot act or the representative is not appointed, the court appoints an administrator.

The conditions for appointing a court-appointed administrator in the dispute referred to in Article 253 § 1 CCPC is specified in § 2 of that provision. This occurs when, firstly, the management board cannot act for the company, and secondly, there is no resolution to appoint a representative. The construction of this provision is not very fortunate, as the question whether the management board may act or not is of secondary significance in the situation of appointing a special representative (under Article 253 CCPC). Pursuant to § 1 of Article 253 CCPC, the power of the management board to participate in the dispute is effective only if no representative has been appointed for the proceedings for revoking or declaring a resolution invalid. If a representative is appointed, this circumstance alone precludes the appointment of an administrator. It is only when such a situation arises that it should be examined whether the management board may possibly act on behalf of the company. If this question is answered in the affirmative (even if no representative has been appointed for the company), the appointment of an administrator by the court is also inadmissible.

If there is a dispute other than the one referred to in Article 253 CCPC, it is possible for the supervisory board or the representative of the shareholders' meeting to act (Article 210 CCPC). This refers to any dispute the company may have against management board members, excluding Article 253 CCPC.

CONCLUSION

It should be clear that the power of attorney plays a special role in the regulation of the Code of Commercial Partnerships and Companies. It is also widely applied both for the classic representation of entities or persons within the company and the representation of the company itself. At the same time, the representative is granted special status because of the activities he participates in and because of their exceptional status. This position, within the Code of Commercial Partnerships and Companies itself and in the context of the provisions of the Civil Code, also changes depending on whether the representative acts for the company or for the shareholders.

One should also keep in mind the situations where a representative represents the company in classical activities beside Article 210 or Article 253 CCPC. In that case, the representative is authorised by the body usually having the power to do so (the management board) or by other representatives (statutory representatives or representatives appointed under a power of attorney), provided that the conditions of Article 106 CC are met. Moreover, this power of attorney is used for judicial disputes, which has been discussed in this article, and not in legal transactions.

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This makes it possible to state that the use of the word "representative" in the context of the provisions of the Code of Commercial Partnerships and Companies has many meanings.

REFERENCES

Literature

Bieniak J., Bieniak M., Nita-Jagielski G., Oplustil K., Pabis R., Rachwał A., Spyra M., Suliński G., Tofel M., Zawłocki R., *Kodeks spółek handlowych. Komentarz*, Warszawa 2011.

Dumkiewicz M., Kidyba S., *Charakter pełnomocnictwa udzielanego na podstawie art. 210 k.s.h. – glosa do uchwały Sądu Najwyższego z 30.01.2019 r., III CZP 71/18*, „Glosa" 2019, no. 4.

Frąckowiak J., [in:] *Kodeks spółek handlowych. Komentarz*, ed. A. Kidyba, vol. 2, Warszawa 2018.

Grykiel J., *Glosa do wyroku z dnia 15 czerwca 2012 r., II CSK 217/11, OSNC nr 2/2013 poz. 27*, „Państwo i Prawo" 2014, no. 5.

Kamieński. G., *Reprezentacja spółki z o.o. przez pełnomocnika powołanego na podstawie art. 210 § 1 k.s.h.*, Legalis.

Kidyba A., [in:] *Kodeks spółek handlowych. Komentarz*, ed. A. Kidyba, vol. 1, Warszawa 2020.

Kidyba A., [in:] *Kodeks spółek handlowych. Komentarz*, ed. A. Kidyba, vol. 2, Warszawa 2018.

Kidyba A., *Prawo handlowe*, Warszawa 2020.

Kidyba A., Mojak J., *Glosa do wyroku SN z dnia 17 grudnia 1985 r., III CRN 395/85*, „Palestra" 1988, no. 5.

Kopaczyńska-Pieczniak K., [in:] *Kodeks cywilny*, vol. 1: *Część ogólna. Komentarz*, ed. A. Kidyba, Warszawa 2012.

Kuniewicz Z., *Wybrane zagadnienia dotyczące pełnomocnictwa do reprezentowania spółki kapitałowej w umowach z członkami zarządu*, „Rejent" 2006, no. 7–8.

Kuniewicz Z., Czepita S., *Glosa do wyroku SN z dnia 15 czerwca 2012 r., II CSK 217/11*, OSP 2013, no. 9, item 94.

Kuniewicz Z., Leśniak M., *Z problematyki prawnej pełnomocnictwa do reprezentowania spółki z ograniczoną odpowiedzialnością udzielonego na podstawie art. 210 § 1 k.s.h.*, [in:] *Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga jubileuszowa Profesora Józefa Okolskiego*, ed. M. Modrzejewska, Warszawa 2010.

Nowacki A., *Spółka z ograniczoną odpowiedzialnością*, vol. 1: *Komentarz do art. 151–226*, Warszawa 2017.

Opalski A., [in:] *Kodeks spółek handlowych*, vol. 2A: *Spółka z ograniczoną odpowiedzialnością. Komentarz do art. 151–226*, ed. A. Opalski, Warszawa 2018.

Pabis R., [in:] *Kodeks spółek handlowych*, vol. 2B: *Spółka z ograniczoną odpowiedzialnością. Komentarz do art. 227–300*, ed. A. Opalski, Warszawa 2018.

Ryszkowski K., *Forma pełnomocnictwa udzielonego na podstawie art. 210 § 1 k.s.h. na gruncie orzecznictwa Sądu Najwyższego*, „Przegląd Prawa Handlowego" 2021, no. 1.

Sołtysiński S., [in:] *System Prawa Prywatnego*, vol. 17B: *Prawo spółek kapitałowych*, ed. S. Sołtysiński, Warszawa 2010.

Strzępka J., Zielińska E., *Kodeks spółek handlowych. Komentarz*, Warszawa 2015.

Szajkowski A., [in:] S. Sołtysiński, A. Szajkowski, *Kodeks handlowy. Komentarz*, vol. 2, Warszawa 1996.

Wolter A., *Prawo cywilne. Zarys części ogólnej*, Warszawa 1977.

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Legal acts

Act of 23 April 1964 – Civil Code (Journal of Laws 2020, items 1740, 2320).
Act of 15 September 2020 – Code of Commercial Partnerships and Companies (consolidated text Journal of Laws 2020, item 1526).

Case law

Decision of the Supreme Court of 5 October 2011, II UZP 9/11, LEX no. 1096116.
Judgement of the Supreme Court of 22 March 2012, V CSK 84/11, LEX no. 1214611.
Judgement of the Supreme Court of 15 June 2012, II CSK 217/11, OSP 2013, no. 9, item 94.
Judgement of the Supreme Court of 3 February 2017, II CSK 304/16, LEX no. 2284177.
Resolution of the Supreme Court of 22 October 2009, III CZP 63/09, OSNC 2010, no. 4, item 55.
Resolution of the Supreme Court of 30 January 2019, III CZP 71/18, LEX no. 2612713.

ABSTRAKT

Przedmiotem niniejszego opracowania jest analiza statusu pełnomocników w sporach ze spółką, a w konsekwencji zasad reprezentacji w tych sporach. Podjęty w pracy problem badawczy sprowadza się do analizy art. 210 § 1 i art. 253 Kodeksu spółek handlowych (k.s.h.). Przepisy te dotyczą zagadnień związanych z zaistnieniem sporów ze spółką, a w szczególności problemu udziału pełnomocników spółki w tych sporach. Nie powinno budzić wątpliwości, że pełnomocnictwo odgrywa szczególną rolę w regulacji Kodeksu spółek handlowych. Ma ono również szerokie zastosowanie nie tylko w klasycznym zastępstwie podmiotów czy osób w spółce, lecz także samej spółki. Pełnomocnik przy tym uzyskuje pewien status szczególny ze względu na czynności, w których uczestniczy. Należy pamiętać również o sytuacjach, gdy pełnomocnik jest reprezentantem spółki w klasycznych czynnościach, poza art. 210 czy 253 k.s.h. Wówczas „uruchomienie" jego umocowania następuje przez klasyczny organ do tego upoważniony (zarząd) albo przez innych przedstawicieli (ustawowych czy też pełnomocników, jeżeli spełnione są przy tym warunki wynikające z art. 106 Kodeksu cywilnego). Inna sytuacja ma miejsce, gdy umocowuje ich zgromadzenie wspólników lub wspólnicy (art. 210 i 253 k.s.h.). Kolejną cechą pełnomocnictwa szczególnego jest jego wykorzystanie w sporach, a nie czynnościach prawnych. Można zatem stwierdzić, że użycie słowa „pełnomocnik" w kontekście przepisów Kodeksu spółek handlowych może mieć szczególne znaczenie.

Słowa kluczowe: pełnomocnictwo; pełnomocnik; spółka kapitałowa; spory