

PERSONALITY RIGHTS OF A LEGAL PERSON IN LIGHT OF THE CASE LAWS OF THE SUPREME COURT AND COMMON COURTS

OCHRANA OSOBNOSTI PRÁVNICKÝCH OSÔB Z POHLĀDU ROZHODOVACEJ ČINNOSTI NAJVYŠŠIEHO SÚDU A VŠEOBECNÝCH SÚDOV

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ABSTRACT

The subject of considerations covered by the article is the personality rights of a legal person. Since the Polish Civil Code does not include a separate provision within this scope, provisions concerning the protection of personality rights of a natural person apply to it. This results in the fact that the rights of those entities are created by case laws by an analogy to Art. 23 of the Civil Code. By referring to the nature of personality rights, which is regulated by the Code, the author presents opinions concerning their understanding, dominating in the Polish literature and case laws, as well as the model and method of their protection adopted by the legislator. The entire article is complemented by exemplary court decisions, which indicate the values that have been deemed as personality rights of legal persons due to their significant role.

ABSTRAKT

Otázky, ktoré sú kryté týmto článkom, sú záležitosti osobného vlastníctva právnických osôb. Hoci poľské občianske právo neobsahuje konkrétnu úpravu týkajúcu sa tejto problematiky, vhodné ustanovenia vzťahujúce sa na ochranu osobných záujmov sa primerane aplikujú. Táto pozícia vychádza z uplatnenie analógie čl. 23 občianskeho zákonníka založenej súdnymi rozhodnutiami. Vychádzajúc z regulovanej povahy osobných práv, autor článku prezentuje dominantnú pozíciu v poľskej literatúre a rozhodovacej činnosti súdov podporujúcich takéto chápanie, ako aj modely a spôsoby ich ochrany prijatých zákonodarcom. Článok je dopĺňaný príkladmi súdnych rozhodnutí naznačujúcich hodnoty, ktoré kvôli ich špecifickej úlohe, boli posúdené ako osobné práva právnickej osoby.

I. INTRODUCTION

The Polish legal system divides legal entities into natural persons that are individuals and legal persons that are business units, which have a legal personality, just like natural persons. In addition, there are also the so-called business units, which are not legal persons, but have a statutory legal capacity and are subject to provisions applicable to legal persons in accordance with Art. 33¹ of the Civil Code¹. The division adopted in the Polish civil law arises from the role in which the aforementioned entities play in legal relationships in which they participate².

¹ The Act of 23.04.1964, The Civil Code, OJ No. 16, poz.93 as amended, Hereinafter referred to as the Civil Code.

² S. DMOWSKI, R. TOKARZEWSKI, Civil Code. Commentary. Book One. General Part. Warszawa 2014, p. 280-285.

The definition of a legal person states that it is a business unit that has a legal capacity resulting from statutory provisions, and because of that, it can be a part of civil law relationships. The wording of Art. 33 of the Civil Code determines that legal personality is a normative feature assigned by the legislator at the moment of entering the entity into a register appropriate to the form of its operation (for example, the National Court Register). As it is the case with natural persons, legal persons have some features that distinguish and individualise it. They include the name, the company, the organisational structure based on its internal bodies and the assets, which allow it to function in an economic turnover. As it is the case with natural persons, legal persons are entitled to statutory protection of their personality rights, whose aim is to protect the values that are appropriate and applicable to them³. The specificity of the Polish Civil Code results from the fact that the legislator did not introduce a separate provision protecting personality rights of legal persons⁴. They are protected by appropriate provisions concerning protection of personality rights of natural persons, that is Art. 23 and 24 of the Civil Code. The paper is aimed at indication of personality rights, which are the most characteristic for legal persons and their analysis in the light of the current case laws of the Supreme Court and common courts.

II. THE NATURE AND CHARACTER OF PERSONALITY RIGHTS OF A LEGAL PERSON

The catalogue of personality rights of legal persons and business units (in accordance with Art. 33¹§1 of the Civil Code) is constructed on the basis of appropriate application of Art. 23 of the Civil Code⁵ within the scope of its openness, multiplicity of personality rights and subjective rights, upon which their protection is based. The open construction of the catalogue adopted by Art. 23 of the Civil Code and simultaneous lack of a general definition of the term guarantees flexibility that is required within this scope. The Polish Civil Code does not define personality rights, while the doctrine and case laws attempt to specify them and indicate their most characteristic features, which have to refer to the specificity of a legal person⁶. That is why definitions of personality rights refer to their nature by emphasising their various aspects or try to indicate their distinguishing features. According to P. Granecki, personality rights of legal persons can be defined as “non-material rights, which have their source in constitutional principles of the country’s economy”⁷. In the J. Koczanowski’s opinion “a personality right of a legal person can be understood as every right associated strongly to the entity, constituting an element of its “personality”⁸. On the other hand, J. Panowicz-Lipska emphasises that personality rights of a legal person are “non-material values thanks to which a legal person can operate correctly, in accordance with the scope of its activity”⁹. The Supreme Court indicated

³ Since the entrepreneur operates under the business, which is the name indicating the form of a legal person, its head office and core business, it is an element individuating and as such closely associated with the entity, without being able to dispose of it Similarly to the name of a natural person.

⁴ Art. 34 of the Civil Code according to which the provisions on the protection of personal rights of individuals apply *mutatis mutandis* to legal persons.

⁵ M. PAZDAN, Civil Code, Commentary to the Art. 1 – 449¹⁰, T. 1, (red.) K. Pietrzykowski, wyd. 6, Warszawa 2012, s. 209, A. Kubiak-Cyrul, Personal interests of legal entities, *Zakamycze* 2005, s.10, Z. RADWAŃSKI, Civil Law – General Part, wyd. 2, Warszawa 1996, s.136 i n., A. Wojciechowska, Are the copyright personal interests personal possessions of civil law?, *Kwartalnik Prawa Prywatnego* 1994, Nr 3, s. 376

⁶ Supreme Court judgment of 25 May, 1977, CR 159/77, Lex No. 70901, which was one of the first to address the specifics of personal legal persons. Supreme Court emphasized that, in accordance with Art. 43 of the Civil Code provisions on the protection of personal rights of individuals shall apply accordingly to legal persons. Appropriate use of art. 23 of the Civil Code excludes from the scope of this protection, but such good personal rights, which in the case of a legal person in general cannot be taken into account, for example the health.

⁷ P. GRANIECKI, Personal rights in the Polish law - issues of personal goods of legal entities, *Przegląd Sądowy* 2002, Nr 5, p. 8.

⁸ J. KOCZANOWSKI, Protection of personal goods of legal person, Kraków 1999, p. 7.

⁹ J. PANOWICZ-LIPSKA, Assets protection of personal assets, Warszawa 1975, p. 28.

that the “personality rights of legal person are understood as non-material assets, thanks to which a legal person can operate within the scope of its activity”¹⁰. Personality rights of a legal person result from the legal personality assigned to it under a legal provision, which constitutes a reference to the subjective dignity, which is the source of personality rights in case of a natural person¹¹. The legal character of personal subjective rights is indicated by the general nature of those rights, and allows for their classification as absolute rights as they are inseparable from the entity entitled to them and because of that, they are inviolable and unalienable¹². Both the doctrine and the judicature emphasize the intangible nature of personal rights and it is stressed that at the same time these laws are not without a certain emphasis on assets, which is noticeable in two areas; commercialization of certain goods and chargeable authorizing operations and compensation ways of illegal exploitation of other people's personal rights. It is worth mentioning that as historical terms the nature of personal interests, is especially accurately recognized by F. Zoll, indicates clearly that as of their primary feature of classification should be indicated their non-property of their character, and a special bond, therefore seen as "lack of a separate substrate, which may be distinguished as a matter of law ", while accentuated of their property potential¹³. In the case of legal persons - active economic entity, while protecting their personal rights, it is difficult to distinguish between personal and property interests, since often a violation of personal rights leads to the violation of property interests¹⁴. A kind of personal economization of the area of is noticeable in the form of changes in the assets of certain entities. Their scope may relate to, among others, the situation related to activities that infringe personal rights and actions taken by entities authorized in a scope of benefits associated to the exploitation of personal interest, in a situation where nature of the asset allows it. Such property can sometimes get a measurable asset value, which does not however change its non-property qualifications¹⁵. Despite the wording of Art. 43 of the Civil Code, the nature of personality rights of legal persons indicates significant differences between them and the rights of natural persons, resulting from their structural and functional specificity and the objective of the legal person's business. As the Supreme Court emphasises, only Art. 24 of the Civil Code is applicable to legal persons, while the remaining provisions can be applied only after introducing appropriate modifications and taking into account structural and functional differences between natural and legal persons. The range of personality rights to which both of those entities are entitled is not the same, and Art. 43 of the Civil Code does not protect personality rights immanently related to the natural person and its psychophysical properties, such as life, health, freedom of conscience and worship of a deceased person¹⁶. However, what is of key significance during the determination of the range of personality rights of a legal person are the objectives of its business activity and its function¹⁷.

In case of unlawful infringement of personality rights upon a legal person, the Civil Code provides property and non-property safety measures. The entity (the legal person) can bring a civil action in order to establish them or waive them. In addition, the entity may request remedies for infringements that occurred. This protection provided for by the law may result from provisions of other acts, among which provisions of press law and the act on combating unfair competition are of key significance in case of infringement of personality rights of a legal person.

¹⁰ Supreme Court judgment of 14 November 1986 SN II CR 295/86, OSNC, 1988, No. 2-3, p.40.

¹¹ J. MATYS, Personal interests of legal persons and their non-property protection, *Legal Monitor*, 2006, nr 10, s. 521.

¹² S. KUBIAK-CYRUL, *Personal rights...*, p. 136

¹³ In the earlier literature, F. Zoll pointed this out, *an outline of Civil Law*, Kraków, 1946r., p. 110-112.

¹⁴ J. KREMIS, *Basics of civil and commercial law. civil law*, pod red. E. Gniewka, t. I, Warszawa 2002, p. 69.

¹⁵ J. KOCZANOWSKI, *Protection of personal goods ...*, p. 35.

¹⁶ M. PAZDAN, *The Civil Code, Commentary on Art.1 – 449*¹⁰, T. 1, (red.) K. Pietrzykowski, wyd. 6, Warszawa 2012, p. 118.

¹⁷ Judgement of the Supreme Court of 26.10.2006 ., I CSK 169/06, www.sn.pl/orzecznictwo (12.04.2016).

III. THE TYPES OF ASSETS OF A LEGAL PERSON WITHIN JURISDICTION

Given the lack of modeled on Art. 23 of the Civil Code directory of personality rights of legal person based on an established case law position, supported by views of the doctrine, such a right is undoubtedly the name of the legal person. It constitutes an element identifying and distinguishing the entity from others, and her or his role is similar to the name of an individual. As pointed out by the Supreme Court in its judgment of 28 October 1998¹⁸ to the selected designation of a legal person, which, as the name of the person serves an individualizing role that distinguishes that person from others, have the effect distinctive, which distinguishes it from other entities in the collective consciousness a clear association between the selected mark and the marked by its use of a person must be developed. From this point of view, a faint worth distinguishing are the words of everyday language, because they belong to the public domain and no one can "appropriate" to use them by the fact that will serve them to designate of a legal person in the belief that others will no longer be able to use the same word to designate another legal person. Another covered by the protection element of identification of a legal person may be a symbol used by him or her. In a ruling of 7 March 2003., the Supreme Court pointed out that the symbol of a legal person is the carrier of his or her identity in the external perception and just like the name or the company is a personal right, which is protected under art. 24 read in conjunction with Art. 43 of the Civil Code¹⁹. To some extent associated with such a stated symbol is the image of a legal person, but there is no consensus on how to locate it among personal rights of a legal person.

a) Good name

The most recognizable personality right of a legal person is its good name. In general, it is understood as the good presumption of others of the legal person, in particular because of its activity²⁰. The basis for this positive opinion are certainly descriptive statements, statements evaluation, and information on the entity, both the ones arising from a variety of commonly available data relating to the operations led by the activity (especially in terms of economic activity) as well as those evaluating which directly influence an opinion on it.

The good name of a legal person is infringed by statements that, assessing objectively, attribute legal person case of incorrect treatment that could result in a loss of its trust being necessary for the proper functioning within its own tasks²¹. Fundamental meanings of the term "good name" is widely seen in the individual person, which is stated on two aspects; External - understood as the good name, and internal - corresponding to the notion of personal dignity²². As pointed out by the Supreme Court "reverence, good name, a good man's reputation are concepts that cover all areas of his or her personal life, career and social life. Violation of the reverence can thus occur both by the slander of negative behavior in a scope of personal and family life, and by charging of misconduct in professional life, affecting the good name of a person and that could expose him or her to a loss of trust that is necessary to practice the profession or other activity"²³. With regard to the legal person, only the outer part, known as a good name is associated with the opinion _ other people have about the person²⁴. In terms of the conceptual definition of "good reputation" is often replaced by expressions: renown, repu-

¹⁸ Supreme Court judgment dated 28 October 1998. II CKN 25/98, OSNC 1999, No. 4, pos. 80. Approving voices of R. Stefanicki PPH 2000, nr 12, p. 43 i W. Włodarczyk, PiP 2000, z. 8, p. 109.

¹⁹ Supreme Court judgment dated 7 March 2003. I CKN 100/01, Lex No. 83833.

²⁰ A. KUBIAK-CYRUL, *Personal rights...*, p. 165.

²¹ Judgement of the Supreme Court of 9 June 2005, III CK 622/04, not published.

²² A. SZPUNAR, *Compensation for non-pecuniary damage*, Bydgoszcz 1999, p. 101.

²³ Supreme Court judgment of 29 October 1971. II CR 455/71, the Supreme Court OSNC 1972 No. 4 pos. 77.

²⁴ J. FRĄCKOWIAK (w:) *The Private Law*, vol. 1, p. 1082.

tation, brand, fame (notoriety), established position. The case law emphasizes that "common good of a legal person is, among others, good reputation-understood as a brand, established position"²⁵. In the sense of the language concept both the term renown (fr. renommée), reputation (fr. réputation) or brand (ger. marke) and fame mean good opinion, the term fame may be additionally understood by a publicity, or otherwise to be well-known due to their achievements, and the brand is also the identifying mark (trademark). It is combined with the opinion on the entity other individuals have because of the scope of its activities. It takes into account not only the reputation resulting from continuing operations of a legal person, but somehow assumed (presumed) reputation of a legal person since its creation²⁶.

b) Secret of correspondence

There is no doubt that the personality right of a legal person is the secret of correspondence, which includes a variety forms, for example: including postal, telephone, electronic and even radio. It should be noted that the protection covers the contents of correspondence and is entitled to both its parties (the sender and the addressee). The most popular form of infringement is preventing of sending the correspondence, its destruction, distorting its text, reading it and disclosing of its contents²⁷.

c) Image

The case law and the doctrine explicitly emphasize that the image is a good assigned for natural person and it is harder to adapt it to a legal person²⁸. Although in a scope of recent case law voices that the image belongs to that person can be found²⁹. These statements seems to be heading in a similar way; that the scope of privacy of a legal person distinguishes and points to the need to protect the personal data of a legal person³⁰.

d) Inviolability of the premises of a legal person

Just as the inviolability of the home is protected by a natural person, such a protection is covered by the inviolability of the premises of a legal person. The doctrine is not homogeneous, some representatives of science share the opinion that protection is granted to only those rooms occupied by the bodies of a legal person and its personnel³¹. You can also find the position pointing to the wide range of enacted by that protection covering all areas in which the legal entity conducts its activity³². Violation is therefore a physical intrusion into the room, unlawful searching, being in it without permission and ransoming. The very qualification also includes the installation of equipment used for intercepting and filming. Acknowledged as a personal interest of a legal person inviolability of the premises is sometimes regarded as the basis to extract of the privacy as another kind personality right of legal person. Although there is no compliance in this area you can point to the judgment to the privacy of a legal person they refer³³.

²⁵ Supreme Court judgment of 22 January 2015. I CSK 16/14, Lex No. 1621771.

²⁶ Judgment p. Appeal. Bialystok of 25 April 2013. I ACa 102/13, Lex No. 1,315,629.

²⁷ A. SZPUNAR, Personal rights protection, Warszawa 1979, p. 33.

²⁸ Judgment p. Appeal. Warsaw November 19, 2013., VI ACa 657/13, Lex No. 1444945.

²⁹ Judgment p. Appeal. in Warsaw 20.10.2014 r., ACa 456/14, Lex No. 1554794.

³⁰ Judgment p. Appeal. Bialystok January 22, 2014. I ACa 666/13, Lex No. 1425370.

³¹ M. PAZDAN, The Civil Code, Volume I, Commentary, ed. K. Pietrzykowski, Warszawa 2002, p. 117.

³² Supreme Court judgment of 7 October 2009. III CSK 39/09, Lex No. 532155.

³³ Supreme Court judgment of 24 May 2011. I PK 299/10, LEX No. 863878.

IV. SUMMARY

Summing up, it must be stated that due to the construction of the open catalogue of personality rights and the need to apply provisions on protection of those values to legal persons appropriately, personality rights of a legal person are determined by case laws. This social acceptance is thus specified in a new personality right distinguished by case laws, based on the need to provide protection to this right in the form of a subjective right attributed to it. The presented case laws concern values, which are the most characteristic for a legal person and confirm the observed tendency of describing non-uniformly distinguished and specified personality rights. It can be illustrated well with the example of replacing the term “legal person’s good name” with the following terms: renown, reputation, brand and notability with the assumption that those terms are not synonyms of the source term. In addition, if they are not clearly specified, there is a risk of too wide an interpretation of them.

KLÚČOVÉ SLOVÁ

právnická osoba, osobné práva, povest', sláva, neporušiteľnosť priestorov

KEYWORDS

legal person, personality rights, good name, reputation, inviolability of premises

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