

mgr Paweł Daszczyk

Department of Economic and Commercial Law

Faculty of Law and Administration of UMCS

Summary of the doctoral dissertation

"Guardian of the substantive law of an entrepreneur - a legal person"

The subject of the dissertation is the analysis of the legal position of the guardian of substantive law of a legal person, in particular the scope of his rights and obligations. This subject has not been formed as a monographic study so far.

The dissertation is divided into four chapters. The first one is devoted to the issue of the legal nature of guardianship, which is the basic for the subject of the dissertation. The considerations contained in it concern the explanation of what representation is, discussion of its types, as well as the differences between direct and indirect representation and the theory of corporate personality. According to art. 42 § 2 of the Civil Code, until the legal person's body or liquidator has been established, the guardian represents a legal person and conducts its affairs within the limits specified in the court's certificate. The work is aimed to clarify that the legal relationship of guardianship consists both the authority to represent the legal person and to conduct its affairs.

The second chapter is focused on the establishment of guardianship. Among the reasons for appointing a guardian, significant doubts relate to the contained in art. 42 § 1 of the Civil Code distinction between the lack of an legal person's body and the deficiencies in its composition and their impact on the ability of the legal entity to act. The work presents the view that the so-called "partial body" is an existing legal person's body. Its members may independently conduct activities which do not exceed the scope of ordinary activities of a legal person, as they do not require adoption of resolutions and, whatsoever, the application of the majority rule. In cases exceeding the scope of ordinary activities, the regulations governing the adoption of resolutions are decisive for the possibility of conducting them. If the number of members of the body is enough for adopting resolutions in accordance with the provisions regarding the quorum and the required majority of votes, then the resolutions are effective. In the case of representation, to submit a declaration of will as a legal person, it is enough when members of legal person's body act in accordance with the adopted technique of joint representation.

The third chapter deals with the rights and duties of the guardian. His basic task is to undertake activities aimed at appointing or complementing the composition of the body

authorized to represent a legal person, and, if necessary, to liquidate it. In practice, these “efforts” will consist of convening a meeting of this body of a legal person which is entitled to appoint a board of directors or to ask persons to whom such right has been granted under the legal person’s statute. However, liquidation activities aim at opening the liquidation of a legal person as a result of a resolution adopted by its members (eg partners in a limited liability company) or a court decision.

In accordance with the previous legal status, the guardian was not able to conduct activities and represent a legal person outside the indicated scope, eg to represent it in civil proceedings, to acquire rights on its behalf or to enter into commitments. Amended art. 42 § 2 of the Civil Code provides that until the composition of the body is consistent with legal person’s statute or the liquidator is appointed, the guardian represents and conducts its affairs within the limits specified in the certificate issued by court, which is a significant change compared to the previous legal status. The boundaries referred to in this provision are not so much the scope of the right of representation and handling of cases by the guardian, but the purpose of the guardianship. The guardian has the authority to take on behalf of and for the benefit of a legal person all court and out-of-court actions, but only within the limits of the purpose set by the court. When issuing a decision on establishing a guardianship, the court decides whether the guardian is to take only “healing” or liquidation proceedings, or other activities indicated by the court. The aims defined in this way determine the boundaries of the guardian’s powers.

In the fourth chapter, an analysis was carried out on issues related to the setting up of guardianship and the civil responsibility of the guardian. Article 42 § 2 of the Civil Code provides that the guardian represents a legal person and leads its affairs until the composition of the body is consistent with legal person’s statutory regulations or the liquidator is appointed (article 42² of the Civil Code). This means that the guardian acts upon one of the events indicated in this provision, without the court having to adjudicate in this matter.

The work points out that when causing damage to legal person arising from improper conduct of guardianship, the guardian does not violate common obligations, only obligations imposed on him, in relation to the legal relationship of guardianship. His liability should therefore be classified as *ex contractu* liability. It applies not only to liability for damage under obligations, but also to damages caused by other legal relationships, such as guardianship. This does not, of course, exclude the tort liability of the guardian, if the improper performance of the guardianship is related to an unlawful act resulting in damage.