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**THE LEGAL NATURE OF RESOLUTIONS OF THE GOVERNING  
BODIES OF COMPANIES AND THEIR CHALLENGEABILITY  
IN THE LIGHT OF THE PROVISIONS OF POLISH LAW**

**Abstract**

The subject of this article is an analysis of the functioning models of the claimability of the resolutions of the bodies of companies in terms of the connection of these models with the legal nature of these resolutions. In the case of resolutions of shareholders meetings of companies, the provisions of the Code of Commercial Companies and Partnerships provide for a judicial review of each resolution adopted by that body. A different situation occurs in the case of resolutions of supervisory boards of companies, for which no procedure for pursuing legal actions against them is provided for in the CCC&P. The doctrine and the case law assume that, as a consequence of the application of the principle of unity of civil law, these resolutions can be challenged in court, as can invalid legal transactions. In this case, therefore, the legal nature of the resolution, and thus the determination that it is a legal transaction is crucial for the possibility of its challenging in court.

**Keywords:** resolution, claimability, resolutions of the bodies of companies

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## Introduction

Regulations regarding Polish company law do not contain a definition of a resolution, just as there is no such definition in the provisions of the Civil Code.<sup>1</sup> For these reasons, the legal nature of resolutions adopted by the bodies of companies has been an object of interest of the commercial law doctrine for many years.<sup>2</sup> The deliberations are conducted in particular with reference to the resolutions of the assemblies of companies, permitting the performance of a legal transaction, in connection with the regulation of Article 17 of the Code of Companies and Partnerships.<sup>3</sup> The legal nature of resolutions of bodies other than shareholders' meetings has been the subject of research in the context of seeking a legal basis to challenge resolutions of these bodies.<sup>4</sup>

## The legal nature of the resolution of the corporate body

Most representatives of the Polish legal doctrine agree that the resolutions should be included in legal transactions in a broad sense. A resolution is an expression of the collective will of the body of a legal person (or a statutory person), and it is referred to as a "collective legal transaction" or a "collective declaration of will".<sup>5</sup> Resolutions may be included in a separate category of corporate activities as a specific category of legal transactions.<sup>6</sup> It is emphasized that the resolution

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<sup>1</sup> The Act of 23 April 1964 the Civil Code, Journal of Laws of 2018, item 1025, as amended; the Act of 15 September 2000 Code of Companies and Partnerships, Journal of Laws of 2019, item 505, as amended.

<sup>2</sup> Antoszek, P., *Cywilnoprawny charakter uchwał wspólników spółek kapitałowych*, Warszawa 2009, p. 144; Sołtysiński, S., *Charakter prawny uchwał rady nadzorczej*, in: Modrzejewska, M. (ed.), *Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga pamiątkowa ku czci Profesora Józefa Okolskiego*, Warszawa 2010, p. 952; Frąckowiak, J., *Charakter prawny uchwał organów spółek kapitałowych a ich zaskarżalność*, "Przegląd Prawa Handlowego" 2014, No. 9; Popiołek, W., *Charakter prawny uchwał wspólników i organów spółek kapitałowych*, "Przegląd Prawa Handlowego" 2014, No. 9; Ziemanin, B., *Charakter prawny uchwał kolegialnych organów osób prawnych*, "Przegląd Prawa Handlowego" 2014, No. 9.

<sup>3</sup> Antoszek, P., *Charakter prawny uchwał zgromadzeń spółek kapitałowych zezwalających na dokonanie czynności prawnych przez spółkę*, "Przegląd Prawa Handlowego" 2006, No. 7, pp. 28–35.

<sup>4</sup> Sikorska-Lewandowska, A., *Sanckje wadliwych uchwał rad nadzorczych spółek kapitałowych i spółdzielni*, Toruń 2013, p. 71.

<sup>5</sup> Pazdan, M., *Niektóre konsekwencje teorii organów osoby prawnej*, in: *Prace Naukowe Uniwersytetu Śląskiego* 5, "Prace prawnicze" I., Katowice 1969, p. 205.

<sup>6</sup> Radwański, Z., *System prawa prywatnego. Prawo Cywilne – część ogólna*, v. 2, Warszawa 2008, p. 181.

may bring about an internal or external effect, depending on whether the subject of its regulation is intra-corporate relations, or whether it is a declaration of will made to a third party by the company. In particular, in relation to internal resolutions, their civil nature was questioned, indicating a number of specific features that distinguish them from classical civil law transactions.<sup>7</sup> Among these differences one should mention the effective adoption of resolutions by a majority of votes, and the consequent lack of a requirement to submit consistent declarations of will, including omitting those voted through, specific requirements for convening, and holding a meeting of the body.<sup>8</sup> For these reasons, a proposal has been made to distinguish a separate type of legal transactions, the so-called intra-corporate legal transactions.<sup>9</sup>

There is no doubt that not all resolutions adopted by collective bodies of legal persons can be treated as civil law transactions, but only those that contain a body's declaration of will in their content, and which aim to produce a legal effect in the form of creating, changing, or terminating a civil-law relationship.<sup>10</sup> The literature assumes that only such resolutions may be adopted as will not have the effect of creating, changing or terminating the legal relationship, and thus will not have a civil law nature, i.e. those in which congratulations or acknowledgements are included.<sup>11</sup> The adopting of these resolutions cannot be ruled out, however, but, since their content will not bring about a legal effect, no need to challenge them will arise.

The doctrine proposed a division of resolutions adopted by legal entities and being legal transactions, into three types:<sup>12</sup> (1) resolutions that bring about an external effect directly and without the participation of other bodies, (2) resolutions constituting a component of a legal transaction performed by another body, and (3) resolutions that produce only internal effects, affecting the structure and operation of the legal entity itself.

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<sup>7</sup> Frąckowiak, J., *Handlowe czynności kreujące*, "Przegląd Prawa Handlowego" 2008, No. 12, p. 12.

<sup>8</sup> Frąckowiak, J., *Handlowe*, p. 11.

<sup>9</sup> Frąckowiak, J., *Charakter prawny*, p. 26.

<sup>10</sup> Radwański, Z., *System*, p. 183; Antoszek, P., *Cywilnoprawny*, p. 279; Ziemiński, B., *Charakter*, p. 49.

<sup>11</sup> Radwański, *System*, 183.

<sup>12</sup> Ibidem, pp. 183–184, Ganobis, M., *Uchwały zgromadzeń spółek kapitałowych a pojęcie czynności prawnej*, "Monitor Prawniczy" 2007, No. 23, p. 1296.

In particular, with respect to resolutions of bodies with only internal effects, and thus not bringing about direct effects in relations with third parties, but directed to another body, it was assumed that they are “internal transactions” that do not have the features of civil law transactions.<sup>13</sup> However, the doctrine emphasized that each of the types of resolutions distinguished has civil law effects, including those related to the internal sphere.<sup>14</sup> This is a result of the fact that intra-corporate relations belong to civil law relations, and therefore the adopted resolutions, concerning them, relate to the civil law sphere.<sup>15</sup>

The lack of an external effect of this resolution does not nullify the civil law nature of the resolution, for it is necessary to opt for a view according to which the corporate relationship is a civil law relationship.<sup>16</sup> Relations between bodies, as well as between members of bodies and those bodies, and finally between bodies and the company, are of a civil law nature. The structures of company law, as is apparent from the provision of Article 2 of the Code of Commercial Companies and Partnerships, were based on the basic institutions of the Civil Code, and not on separate structures relevant only to the commercial companies law.<sup>17</sup> Each resolution consists of declarations of will of the members of that body, jointly expressing the will of the body. Resolutions are, therefore, a specific type of legal transactions, they express the collective will of the body, which is assigned, by means of the theory of the body, to a legal person. The doctrine proposes to distinguish the category of intra-corporate legal transactions, which include the resolutions.<sup>18</sup>

### **Challengeability of the resolution of a shareholders’ meeting**

In the light of the provisions of the Code of Commercial Companies and Partnerships, the grounds for invalidity of a resolution of a shareholders’ meet-

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<sup>13</sup> Judgment of the Court of Appeal in Katowice of 05/11/2009, V ACa 352/09, LEX No. 599725.

<sup>14</sup> Sołtysiński, S., *Charakter*, pp. 957–958.

<sup>15</sup> Sołtysiński, S., Opalski, A., *Zaskarżanie uchwał zarządów i rad nadzorczych spółek kapitałowych*, “Przegląd Prawa Handlowego” 2010, No. 11, p. 10.

<sup>16</sup> Banaszczyk, Z., *System Prawa Prywatnego*, v. 1, Safjan, M., (ed.), Warszawa 2012, p. 977.

<sup>17</sup> Radwański, Z., *System Prawa Prywatnego*, v. 2, Radwański, Z., (ed.), Warszawa 2002, p. 442.

<sup>18</sup> Frąckowiak, J., *Uchwała zgromadzenia wspólników spółki kapitałowej jako czynność prawna wewnątrz korporacyjna*, “Przegląd Prawa Handlowego” 2018, No. 9, p. 19.

ing, specified in the provisions of Articles 249 and 252 of the Code of Commercial Companies and Partnerships and Articles 422 and 425 of the Code of Commercial Companies and Partnerships completely disregard the legal nature of the resolution. The resolution of a shareholders' meeting that is contrary to the law is invalid, regardless of whether or not it has civil law effects, and possibly to what extent. Similarly, in the case of substantive law prerequisites resulting in the repeal of the resolution, they do not refer to the legal nature of the adopted resolution, although in practice it is difficult to accept that a settlement on a conflict with the company's statutes or articles of association may apply to a resolution that does not bring about non-civil law effects. In principle, the legal regime of challenging the resolutions of the assemblies resulting from the Code of Commercial Companies and Partnerships is complete, and therefore excludes the possibility of invoking grounds for the invalidity of resolutions other than those specified in the provisions of the Code of Commercial Companies and Partnerships.<sup>19</sup>

The lack of a possibility of applying the consequence of absolute invalidity provided for in Article 58 of the Code of Commercial Companies and Partnerships to defective resolutions of shareholders' meetings arises directly from the regulation of the Code of Commercial Companies and Partnerships, which provides for separate actions and prerequisites for their inclusion. However, in civil proceedings initiated by a complaint for the repeal or for declaration of invalidity of resolutions of shareholders' meetings, it may be necessary to use the provisions of the Civil Code, especially in such cases as verifying the correctness of the vote cast by a shareholder or assessing the effects of acting by proxy. The principle of unity of civil law, which is applicable to matters not regulated by the Code of Commercial Companies and Partnerships, makes it possible to use the provisions of the Civil Code in such situations.

Undoubtedly, in the case of resolutions of the shareholders' meetings, the regulation of the Code of Commercial Companies and Partnerships indicates that their challengeability does not depend on the legal nature of the resolution. The right to challenge a resolution has been granted *ex lege* to specific entities pos-

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<sup>19</sup> Bilewska, K., *Zaskarżanie uchwał zgromadzenia wspólników przez odwołanych członków organów spółki*, "Monitor Prawniczy" 2007, No. 19, p. 1100; Koch, A., *Charakter sankcji wobec sprzecznych z prawem uchwał spółek kapitałowych*, "Przegląd Prawa Handlowego" 2007, No. 2, p. 9; Osajda, K., *Kodeks spółek handlowych w orzecznictwie Sądu Najwyższego w II półroczu 2004 r.*, "Glosa" 2006, No. 1, p. 7.

sessing the right of action, with the effectiveness of the exercise of this right dependent on the occurrence of certain material and legal premises. If an action is brought, the existence of a resolution of the assembly and the occurrence of premises for the defectiveness of the resolution are examined, not its legal nature.

However, the legal nature of a resolution is significant, not only in the context of the admissibility of its challenge, but this does not concern the resolutions of the assemblies, but other aspects. A decision that a resolution belongs to a group of legal transactions results in the possibility of applying to it the provisions on declarations of will, as well as the regulation of the Civil Code on the consequences of defects in legal transactions.<sup>20</sup> Then, it is also possible to adopt, with reference to resolutions, the legal structure of a non-existent resolution (legal transaction), which raises numerous controversies in the doctrine.<sup>21</sup>

### **Searching for legal grounds for challenging resolutions of bodies other than a shareholders' meeting**

In the absence of any regulation in the CCC and P regarding the control of resolutions adopted by such bodies as the supervisory board and the management board of a company, the admissibility of challenging them was considered, formulating three theses. It was possible to accept that the resolutions of these bodies are not challengeable,<sup>22</sup> since the legislator did not explicitly specify the instruments for challenging them, or on the contrary, accept that they are challengeable, since this was not explicitly excluded. In the Code of Commercial Companies and Partnerships, as in the previous Commercial Code, the legislator passed over in silence the issue of the lawfulness of resolutions of such bodies as the supervisory board, the audit committee, or the management board of a com-

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<sup>20</sup> Popiołek, W., *Charakter*, p. 11.

<sup>21</sup> Sołtysiński, S., *Rozważania o nieważnych i "nieistniejących" czynnościach prawnych ze szczególnym uwzględnieniem uchwał zgromadzeń spółek kapitałowych i spółdzielni*, in: Brzozowski, A. et al. (eds.), *W kierunku europeizacji prawa prywatnego, Księga pamiątkowa dedykowana profesorowi Jerzemu Rajskiemu*, Warszawa 2007, p. 316; Szczurowski, T., *Nieistniejące uchwały zgromadzenia spółki kapitałowej*, "Monitor Prawniczy" 2007, No. 6, p. 307; Tofel, M. S., *Uchwały nieistniejące na gruncie kodeksu spółek handlowych*, "Państwo i Prawo" 2007, No. 4, p. 69; Krużyński, M., *Uchwały nieistniejące*, "Przegląd Prawa Handlowego" 2008, No. 7, p. 44; Sołtysiński, S., *Czy "istnieją" uchwały "nieistniejące" zgromadzeń spółek kapitałowych i spółdzielni*, "Przegląd Prawa Handlowego" 2006, No. 2, p. 9.

<sup>22</sup> Resolution of the Supreme Court of 7 October, 2009, III CZP 114/93, OSNC 1994, No. 4, item 73.

pany. Recognition of the possibility of questioning the validity of resolutions in court led to the search for a way to challenge them. Two competing concepts appeared at that time: according to the first of these, to defective resolutions of supervisory boards the provisions of the Code of Commercial Companies and Partnerships should be applied *per analogiam* in the challenging of resolutions of assemblies,<sup>23</sup> and according to the second, contradictory concept, the provisions of the Civil Code on defective legal transactions are appropriate.<sup>24</sup> The decision to choose one of these different ways of judicial control of the correctness of resolutions of collective bodies other than the assembly depended on the adopted assumption as to the legal nature of the resolution.

The decision in this matter was brought by the resolution of the seven judges of the Supreme Court of 18 September 2013,<sup>25</sup> which was given the force of a legal principle. The resolution states that resolutions of the management board, supervisory board, and audit committee of a limited liability company, and resolutions of the management board and supervisory board of a joint-stock company are subject to challenge by way of a declaratory action (Article 189 of the Code of Civil Procedure in conjunction with Article 58 of the Civil Code). The resolution met with divergent assessments in the doctrine.<sup>26</sup>

The legal nature of the resolution became the starting point for the adoption of the provisions of the Civil Code and the Code of Civil Procedure, and thus also Article 58 of the Civil Code establishing the consequence of invalidity of the legal transaction and Article 189 of the Code of Civil Procedure as to the possibility of using the action provided for in relation to resolutions of bodies other than the shareholders' meeting.

<sup>23</sup> Judgment of the Supreme Court of 20 January 2009, II CSK 419/08, LEX No. 49155.

<sup>24</sup> Judgment of the Supreme Court of 18 February 2010, II CSK 449/09, Biuletyn SN 2010, No. 4 p. 14.

<sup>25</sup> Resolution of the Supreme Court (7) of 18 September 2013, III CZP 13/13, OSNC 2014, No. 3, item 23.

<sup>26</sup> Osajda, K., *Trzyście uwag krytycznych do uchwały składu 7 sędziów Sądu Najwyższego z 18.09.2013 r. (III CZP 13/13)* "Przegląd Prawa Handlowego" 2014, No. 10, pp. 40–44; Zięba, M., *Glosa do uchwały SN z dnia 18 września 2013 r., III CZP 13/13, Uchwały zarządów i rad nadzorczych spółek kapitałowych*, "Glosa" 2014, No. 4, pp. 34–43; Moskała, P., *Zaskarżanie uchwał organów spółek kapitałowych, Glosa do uchwały SN z dnia 18 września 2013 r., III CZP 13/13*, "Glosa" 2014, No. 4, pp. 44–57; Maliszewska, J. and Tarkowski, M., *Glosa do uchwały SN z dnia 18 września 2013 r., III CZP 13/13*, "Palestra" 2016, No. 4, pp. 98–105; Kidyba, A. and Dumkiewicz, M., *Konstytutywny charakter wyroku sądu stwierdzającego nieważność sprzecznej z umową uchwały wspólników; zaskarżenie uchwały spółki – glosa – III CZP 13/13*, "Monitor Prawa Handlowego" 2014, No. 1, p. 47.

At the same time, owing to a clearly different regulation of the Code of Commercial Companies and Partnerships establishing two separate actions aimed at initiating judicial control of the regularity of resolutions adopted by the general meeting of shareholders, the provisions of Article 58 of the Civil Code and Article 189 of the Code of Civil Procedure do not apply, despite the fact that the resolutions of shareholders' meetings definitely qualify as legal transactions. On the other hand, the situation in which the resolution of the assembly brings about no civil law effects is not an obstacle to its being challenged, since, as previously mentioned, its challengeability has not been linked to its legal nature. The legislator applied the principle of a limited autonomy of commercial law in the sphere of assessing consequences for defective resolutions of company assemblies, but without extending these autonomous solutions, which should be clearly stressed, to the resolutions of the other bodies of these companies.

A completely different situation will occur in the case of resolutions of supervisory boards and resolutions of management boards, to which no features of civil law transactions may be attributed. It seems that in such cases it should be assumed that they will be simply unchallengeable, because the provisions do not provide for a procedure for challenging resolutions devoid of such a nature.

### **The mechanism of applying the provisions of the Civil Code to defective resolutions of bodies other than the shareholders' meeting**

The provision of Article 2 of the Code of Commercial Companies and Partnerships indicates that in matters referred to in Article 1 § 1 of the Code of Commercial Companies and Partnerships, not regulated in the Act, the provisions of the Civil Code shall apply. This regulation thus formulates two premises – the case must be within the objective scope of the catalogue specified in Article 1 § 1 of the Code of Commercial Companies and Partnerships, and at the same time remain unregulated in the Code of Commercial Companies and Partnerships.

And since the functioning of companies has been included in Article 1 § 1 of the Code of Commercial Companies and Partnerships, and the operation of companies through all bodies is undoubtedly contained in this broad concept, and thus also the adoption of resolutions, it must be assumed that this is an issue covered by this regulation. The entire spectrum of issues is connected with adopting resolutions, in particular the issue of defective resolutions and the mode of their judicial control.



This aspect was regulated *expressis verbis* by the legislator only with respect to the resolutions of the shareholders' meetings, and therefore, remained unregulated with respect to the resolutions of the other bodies of companies. In accordance with the wording of Article 2 of the Code of Commercial Companies and Partnerships, in such a situation, the provisions of the Civil Code should be applied directly, because it is a matter unregulated in the Code of Commercial Companies and Partnerships that belongs to the category of "the functioning of companies".

The application of the Civil Code in this case depends solely on one issue – the recognition of the resolutions of these bodies as legal transactions. The inclusion of resolutions in the category of civil law transactions, or their exclusion from this category is of key importance, determining the application of the legal regime from the Civil Code. If we were to adopt a different thesis, and thus assume that resolutions do not belong to the group of civil law transactions, but constitute a peculiar, different group of corporate activities (the name does not matter, the point is that they are not legal transactions), then the application of the provisions of the Civil Code would be excluded.

The rejection of the possibility of applying, *per analogiam*, of the provisions of the Code of Commercial Companies and Partnerships with regard to the consequences of defective resolutions of shareholders' meetings was justified by the statement that there was no loophole in legal regulation in this matter. Since the resolutions of bodies of companies belong to the category of legal transactions, and in matters concerning the functioning of companies but are not regulated in the Code of Commercial Companies and Partnerships, the provisions of the Civil Code should be directly applied, which means that there is no regulatory gap.

The practical considerations also speak against the application *per analogiam* of the provisions concerning the challenging of resolutions of shareholders' meetings to the defective resolutions of other bodies. This regulation, even to the extent of persons having the right of action, is completely inadequate in the case of complaints against the resolutions of other bodies.<sup>27</sup> The circle of people having the right of action would have to be changed; because it is members of the supervisory board, or members of the management board who would be the most often interested in challenging the resolutions of the supervisory board, while the regulation of the Code of Commercial Companies and Partnerships conferring such right of action to shareholders in certain cases cannot be applied here.

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<sup>27</sup> Sołtysiński, S. and Opalski, A., *Zaskarżanie*, p. 6.

### **The effects of the application of the principle of the unity of civil law in the sphere of challenging the resolutions of corporate bodies**

Examination of the legal nature of the resolutions of bodies other than the shareholders' meeting, and recognition of them as legal transactions has resulted in the claim that they may be challenged by an action for their invalidation or, possibly, their non-existence, pursuant to Article 189 of the Code of Civil Procedure. The application of the principle of the unity of civil law, with the exclusion of the possibility of applying analogy, has resulted in the approval of the functioning of two separate, different regimes of challenging the resolutions of corporate bodies. Paradoxically, the principle of unity of civil law, applied in the absence of a regulation in the Code of Commercial Companies and Partnerships of consequences for defective resolutions of other corporate bodies, has not caused harmonization but diversification of the bases and procedure for challenging the resolutions of various bodies of the same legal entity. Such an interpretation is obviously the result of the regulation of the Code of Commercial Companies and Partnerships; should the legislator directly regulate the challenging of resolutions other than the assembly of bodies, there would be no need to look for ways to challenge them.

Under the current legal status, according to a settled interpretation, a resolution regarding the dismissal of a member of the management board will be open to challenge in two separate ways – depending on the question of by which corporate body it has been adopted. It has been noted in the doctrine that it is not advisable to differentiate the rules for challenging because of the nature of the competences in which these resolutions are adopted; the manner of challenging is determined by the body that has passed the resolution.<sup>28</sup> Such a solution cannot be considered satisfactory, because the differentiation of modes of challenging the subject-specific identical resolutions does not stabilize the legal system, but introduces a state of uncertainty. In particular, in such situations, the dualism of modes of challenging resolutions appears as an inconsistency of the legal system. In subject-specific identical matters, the reasonable expectation would be that of a single, coherent challenging procedure.

Commercial law is a part of civil law and it should not, or even cannot, break away from its roots. The foundation in the form of civil law regulations is a support for structures appropriate to commercial companies, sometimes undergoing modifications necessary because of their specificity. For these reasons, the

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<sup>28</sup> Sołtysiński, S. and Opalski, A., *Zaskarżanie*, p. 8.

application of Civil Code regulations to the legal relations of commercial companies is not always unambiguous and obvious. In principle, this procedure should lead to the unification of solutions, and thus the application of typical, general rules of conduct, which should be taken into account by the rational – by definition – legislator.

Unfortunately, the fundamental regulation of the Civil Code, concerning bilateral contractual obligations, is in fact not directly applicable to a company's relations because of the non-adjustment of the regulation. The differences characterizing commercial companies have been included in a separate legal regulation, which is the Code of Commercial Companies and Partnerships, however, this does not include a comprehensive regulation regarding the adoption of resolutions by the bodies, and in particular their challenging.

The regulation of the Civil Code is not adapted to complex corporate relations. The solutions provided for classic contractual relationships do not work in the complexity of the relationships and do not suit their nature within commercial companies. The provision of Article 58 of the Civil Code regulates the consequence of the absolute invalidity of a legal transaction, and the premises of invalidity, in addition to the conflict with the law, are in contradiction with the principles of social coexistence, which does not take into account the richness of corporate relations. In particular, the legal qualification of the conflict between the supervisory board's resolution and the company's articles of association or statutes raises doubts. The doctrine presents the view that in such a case the norms specifying consequences of resolutions of the assemblies that are contrary to the articles of association (statute) of a company or cooperative should be applied analogously to the resolutions of supervisory boards.<sup>29</sup> According to another view, resolutions of the supervisory board that are contrary to the articles of association or statutes of a commercial company are invalid by virtue of Articles 35 and 38 in conjunction with Article 58 § 1 of the Civil Code in conjunction with Article of the Code of Commercial Companies and Partnerships.<sup>30</sup> The regulation of the Civil Code in the area of classic consequences for defective legal actions is either not applicable at all to defective resolutions of corporate bodies, or requires deep modifications. As for the consequence of the suspended ineffectiveness and the

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<sup>29</sup> Sikorska-Lewandowska, A., *Sprzecznosc uchwały rady nadzorczej ze statutom spółki lub spółdzielni*, "Przegląd Prawa Handlowego" 2013, No. 11, p. 46.

<sup>30</sup> Saczywko, M., *Sprzecznosc uchwały rady nadzorczej z umową albo statutom spółki kapitalowej*, "Przegląd Prawa Handlowego" 2014, No. 12, p. 9.

relative ineffectiveness of a legal transaction – in principle, they are not suitable for application to resolutions. Two consequences of invalidity: absolute invalidity and relative invalidity (challengeability) with certain modifications, can be applied to defective resolutions, however, but these are not regulations that take into account the specificity of corporate declarations of will.

Therefore, there is also a lack of general provisions in the Civil Code regarding resolutions of legal entities, more broadly speaking – there is a lack of modern regulations on legal persons and their bodies. Only such a model regulation would be suitable for the defective resolutions of legal entities, in accordance with the principle of the unity of civil law. The current regulation of the Civil Code does not contain satisfactory regulation of the basic rules of operation of legal entities by their bodies, and therefore, through the search for the civil law nature of the resolution, the provisions of the Civil Code on legal acts are applied, even though the Code does not contain any regulations of the specific legal transactions such as resolutions. It seems that it is not even necessary to define a resolution and prejudge its civil law nature. It is much more desirable to set general rules for the functioning of legal entity bodies, as this broad zone of intra-corporate relations has been completely omitted in the Civil Code, and general provisions on legal entities are extremely laconic and therefore insufficient to be used.

The issue of consequences of defective resolutions adopted by corporate bodies perfectly indicates how complicated are the consequences brought about by the application of the principle of the unity of civil law, in the absence of appropriate regulations in the Civil Code. The dualism of procedures for challenging resolutions, even those that are objectively identical, but adopted by various bodies of commercial companies, cannot be assessed positively. In this situation, the proposal to standardize regulations<sup>31</sup> in the field of judicial review of defective resolutions of all corporate bodies, which was expressed earlier, should be repeated.

The assessment of the current solution is not unambiguous, as each of the actions has specific characteristics determining its nature, which can be assessed in both positive and negative terms. An action for a declaration of invalidity provided for in Article 189 of the Code of Civil Procedure allows for the broad challengeability of the resolution, unlimited in time, delimiting the plaintiff's right of action with his/her legal interest, while the complaints provided for in the Code of Commercial Companies and Partnerships determine in a closed manner the

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<sup>31</sup> Sikorska-Lewandowska, A., *Sankcje*, p. 406.

number of entities entitled to lodge them, along with short limitation periods. The time limits of bringing actions undoubtedly influence the stabilization of the company's relations. Pursuant to the action under Article 189 of the Code of Civil Procedure, it is possible to demand the non-existence of a resolution, but such a possibility is not provided for in the Code of Commercial Companies and Partnerships establishing two available actions for challenging the resolutions of shareholders' meetings.

## **Conclusions**

In view of the concept of applying an action for a declaration of invalidity or non-existence of a resolution based on Article 189 of the Code of Civil Procedure for challenging resolutions, criticism should be formulated. Such an action does not guarantee all the effects that a judgment declaring the invalidity of the resolution or quashing the resolution should cause in modern legal transactions. There is a lack of a regulation to ensure the protection of third parties acting in good faith on the basis of a resolution as to which a judgment declaring the invalidity has been passed, i.e. solutions analogous to those provided for in Article 254 § 2 and Article 427 § 2 of the Code of Commercial Companies and Partnerships. There is also lack of grounds for adopting the extended effectiveness of the judgment declaring invalidity of a resolution on the basis of Article 189 of the Code of Civil Procedure in relations between the company and all shareholders, and in relations between the company and members of the company bodies, which, in turn, were provided for in the Code of Commercial Companies and Partnerships. Again, it should be stated that, just as the regulation of the Civil Code in the scope of the consequence of defectiveness is not adapted to corporate transactions such as resolutions, so the regulation of the Code of Civil Procedure does not provide for modern procedural solutions corresponding to the needs of the judicial regulation of intra-corporate relationships of legal entities.

In this situation, the intervention of the legislator seems to be indispensable. A solution would be to extend the regulation of the Code of Civil Procedure by introducing provisions providing for a simple procedure for challenging the invalid resolutions of supervisory boards and resolutions of management boards of commercial companies, subject to the standard currently in force for the resolutions of the assemblies. Another solution could be to introduce a regulation

whereby to resolutions adopted by supervisory boards of commercial companies in cases in which the power to adopt them arises out of the company's articles of association or statutes, the provisions on challenging resolutions of the company's assemblies would apply accordingly.

An alternative to changes in the Code of Commercial Companies and Partnerships is the introduction of general provisions on the operation of legal entities, or, more strictly, the general rules of adopting resolutions by collective bodies of legal persons, which would also include the regulation of challenging resolutions that would apply, unless specific provisions provide otherwise.

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## **Legislation**

The Act of 23 April 1964 the Civil Code (Journal of Laws) of 2018, item 1025, as amended.

The Act of 15 September 2000 Code of Companies and Partnerships (Journal of Laws) of 2019, item 505, as amended.

## **Judicial decisions**

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