

The Principle of Reliability of Business Trading in the Context of Personal Changes in Partnerships

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Abstract: The article presents the issue of personal changes in partnerships from the perspective of dangers to the interests of partners of such partnerships and third parties. The analysis is carried out primarily in the context of the norms concerning the national court register, but also the relevant regulations of the Code of Civil Procedure. On this basis, the author evaluates the current regulations and concludes that they pose significant dangers to both partners of partnerships and creditors as third parties. These dangers arise mainly from the way the system of presumptions provided for in the provisions of the Act on the National Court Register is shaped. The author refers to the *de lege ferenda* postulates expressed in the past and selects the optimal solution from the perspective of implementation of the principle of reliability of business trading, and also presents his own *de lege ferenda* proposals. In the author's opinion, in order to secure the interests of a partner withdrawing from a partnership against the risk of attempts to hold him/her liable for obligations arising after his/her membership in the partnership has ceased, it would be sufficient to grant such a person the right to file an application to remove him/her from the register of entrepreneurs as a partner of the partnership. On the other hand, in order to safeguard the interests of third parties, it would be advisable to broaden the scope of application of the norm arising from Article 14 of the Act on the National Court Register and subject the former partner of a partnership

to the rigors of this regulation. In addition, in order to ensure greater transparency of the data disclosed in the register, in the author's opinion, it is advisable to consider the possibility of introducing, within the framework of the register of entrepreneurs, an institution similar to that provided for on the grounds of land and mortgage register proceedings, concerning the obligation of the court to disclose *ex officio* an identified inconsistency of the actual state of affairs with the state of affairs disclosed in the register of entrepreneurs.

1. Introduction

The issue of personal changes in partnerships has been the subject of interest of the doctrine in the past¹. In this regard, a number of *de lege ferenda* postulates have been expressed, but to date they have not been widely reflected in the provisions of the Commercial Companies Code². The developed

¹ Marcin Aślanowicz, "Zmiany w składzie wspólników spółek partnerskich oraz pozostałych osobowych spółek handlowych," *Prawo spółek*, no. 1 (2000): 20–26; Józef Frąckowiak, "O niektórych zagrożeniach dla handlowych spółek osobowych – szczególnie spółki jawnej," *Przegląd Prawa Handlowego*, no. 9 (2012): 14–20; Grzegorz Gorczyński, "Kilka uwag o tzw. zbyciu członkostwa w handlowych spółkach osobowych," *Prawo spółek*, no. 7–8 (2001): 13–23; Jarosław Grykiel, "Ochronna funkcja rejestru przedsiębiorców na przykładzie wpisów dotyczących spółek handlowych," *Przegląd Prawa Handlowego*, no. 12 (2012): 43–52; Andrzej Herbet, "Odpowiedzialność wspólników za zobowiązania handlowych spółek osobowych – zagadnienia materialnoprawne," *Rejent*, no. 6/146 (June 2003): 62–63; Jakub Janeta and Wiktor P. Matysiak, "O potrzebie reformy prawa spółek w zakresie regulacji spółek osobowych," *Przegląd Prawa Handlowego*, no. 9 (2012): 53–58; Andrzej Kidyba, "Kilka uwag o potrzebie zmian przepisów regulujących półki osobowe," *Przegląd Prawa Handlowego*, no. 9 (2012): 21–25; Grzegorz Kozieł, "Zakres przedmiotowy i podmiotowy przeniesienia praw i obowiązków wspólnika handlowej spółki osobowej," *Przegląd Prawa Handlowego*, no. 12 (2003): 39–44; Sebastian Kowalski, "Odpowiedzialność wspólników spółki jawnej za zobowiązania spółki," *Prawo spółek*, no. 7–8 (2003): 40–48; Marcin Podleś, "Odpowiedzialność wspólnika spółki jawnej wobec osób trzecich po wystąpieniu ze spółki za zobowiązania ze stosunków ciągłych," *Przegląd Prawa Handlowego*, no. 9 (2017): 47–51; Andrzej Wiśniewski, "Kilka uwag w sprawie reformy prawa osobowych spółek handlowych," *Przegląd Prawa Handlowego*, no. 9 (2012): 26–30; Aleksander J. Witosz, "Wpis do rejestru a odpowiedzialność wspólnika spółki osobowej," *Prawo spółek*, no. 7–8 (2009): 13–22.

² Commercial Companies Code of 15.09.2000, consolidated text: Journal of Laws 2022, No. 1467.

views of jurisprudence also do not allow to solve the problems recognized in the doctrine. Issues related to personal changes in partnerships are therefore still relevant, and in addition, the practice of applying the Commercial Companies Code has revealed new problems that require discussion and formulation of possible directions for their solution.

The article presents the issue of personal changes in partnerships from the perspective of the principle of reliability of business trading, in particular on the basis of the Act on the National Court Register³. The article is primarily intended to provide an answer to the question of whether, in the event of personal changes in partnerships, the applicable regulations adequately protect the interests of participants of commercial relations, including both partners of the partnerships and third parties. This issue will be considered on the example of a general partnership, but the comments formulated will be fundamentally applicable to other partnerships as well. On this basis, the *de lege ferenda* postulates presented in the past on related issues will be evaluated, and in addition, new *de lege ferenda* postulates will be formulated.

2. Protection of the former partner

Personal changes in partnerships include, among others, the joining of a new partner or the withdrawal of an existing partner. Under general partnership regulations, in the first case the issue of liability is resolved in Article 32 of the Commercial Companies Code, which provides for the liability of the person joining the partnership for its obligations arising before the date of joining. However, in the case of a partner withdrawing from the company, pursuant to Article 22 § 2 of the Commercial Companies Code, it is generally accepted that the partner remains liable for obligations arising up to the time of withdrawal, but is not liable for obligations arising from that point on⁴. Such withdrawal may occur on various grounds, which include, for example, termination of the partnership by a partner (Article 61 § 1 of

³ Act on the National Court Register of 20.08.1997, consolidated text: Journal of Laws 2022, No. 1683.

⁴ Grzegorz Nita – Jagielski, "Commentary to art. 22 Commercial Companies Code," in *Kodeks spółek handlowych. Komentarz*, ed. Jacek Bienia (Legalis, Warsaw: C. H. Beck, 2022), paragraph 30; Aslanowicz, „Zmiany,” 15; Podleś, "Odpowiedzialność," 48; Polish Supreme Court, Judgement of 18.12.2008 r., Ref. No. III CZP 126/08, OSNC 2009,

the Commercial Companies Code) or a creditor (Article 62 § 2 of the Commercial Companies Code), as well as the transfer of all rights and obligations to another person (Article 10 of the Commercial Companies Code). In all of these cases, the occurrence of one of the substantive legal grounds is sufficient for a consequence of termination of membership in the partnership, and the entry in the register of entrepreneurs is of declaratory significance only⁵. The way of regulation of the liability of the withdrawing partner and the disclosure of such changes in the register of entrepreneurs creates a significant risk of violation of the interests of this person.

This risk results primarily from the principle of the presumption of the authenticity of entries in the register of entrepreneurs, formulated in Article 17 of the Act on the National Court Register. In the event of withdrawal from the partnership, a partner is no longer liable for obligations that have arisen since the legal basis for withdrawal occurred, but for a certain period of time this person still remains listed in the register of entrepreneurs. This creates a risk of attempts by the partnership's creditors to hold him/her liable for obligations arising after the withdrawal, i.e. at a time when he/she no longer had any influence on the partnership's contracting and performance of its obligations. Several possible courses of action can be considered to address this problem. First, consideration should be given to Article 14 of the Act on the National Court Register, which expresses the principle of substantive publicity of register of entrepreneurs in negative perspective. The purpose of this regulation is to motivate the entity obliged to file an application to do so as soon as possible⁶, on pain of not being able to invoke against *bona fide* third parties any data that has not been entered in the register or has been deleted from the register. However, the entity entitled and at the same time obliged to file the application

No. 11, pos. 150; Appellate Court in Kraków, Judgement of 19.04.2018 r., Ref. No. I Aga 117/18, Legalis.

⁵ Grykiel, "Ochronna," 50; Witosz, "Wpis do rejestru," 13.

⁶ Paweł Popardowski, "Commentary to art. 14 of Act on National Court Register," in *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, ed. Konrad Osajda (Legalis, Warsaw: C. H. Beck, 2022), paragraph 4; Agnieszka Michnik, "Commentary to art. 14 of Act on National Court Register," in *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, ed. Agnieszka Michnik (Warsaw: Wolters Kluwer, 2013), paragraph 1.

is only the partnership, not the former partner⁷. From the perspective of Article 14 of the Act on the National Court Register, the partnership does not have sufficient motivation to file an application to update the data, since this change does not affect the liability of the partnership or the current partners in any way. It is only relevant to the former partner, who, however, cannot file an application to the register of entrepreneurs.

Secondly, it is also necessary to take into account the provision of Article 15 (3) of the Act on the National Court Register, which is one of the manifestations of the substantive openness of the entry in positive perspective, and which grants a third party the opportunity to rely on documents and data in respect of which the obligation to make an announcement has not yet been fulfilled, if the failure to make an announcement does not deprive them of legal effects⁸. The former partner should be treated as a third party in relation to the entity obliged to file for the announcement⁹, which gives a chance to ensure an adequate protection of his/her interests. However, attention should be drawn to the resolution of the Polish Supreme Court of 05.12.2008, which considered the issue of validity of legal act performed by a former member of the management board of a limited liability company before his/her removal from the register of entrepreneurs¹⁰. In that ruling, the Supreme Court stated that Article 15 (3) of the Act on the National Court Register only allows to invoke the fact that a particular person joined the management board prior to publishing this information in the register of entrepreneurs. At the same time, however, it was emphasized that this provision does not give grounds for a third party to challenge the validity of an act performed by a person registered in the register of entrepreneurs

⁷ Also: Witosz, “Wpis do rejestru,” 18; Andrzej Nowacki, “Jawność materialna Krajowego Rejestru Sądowego,” *Prawo Spółek*, no. 5 (2007): 36.

⁸ The doctrine has expressed the view that, contrary to the literal wording of the provision, this regulation concerns the obligation to file an application to the register, and not the announcement itself (Witosz, “Wpis do rejestru,” 7–8; Monika Dębska, “Commentary to art. 15 of Act on National Court Register,” in *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, ed. Monika Dębska (Warsaw: Lexis Nexis, 2013), paragraph 1).

⁹ Grykiel, “Ochronna,” 48.

¹⁰ Polish Supreme Court, Resolution of 05.12.2008, Ref. No. III CZP 124/08, Legalis, with gloss of Zbigniew Kuniewicz (OSP 2010/1/1) and Aleksander Jerzy Witosz, (*Przegląd sądowy*, no. 10 (2009): 130–141). This ruling has partially lost its relevance, but not with respect to the issues raised in the article.

as a member of the management board of a limited liability company on the grounds that he/she was not removed from the register of entrepreneurs, despite his/her removal from office. According to the Supreme Court, this provision should be interpreted strictly and applied only to events that are the basis for entry in the period prior to entry, but the regulation does not apply to the reverse situation, involving the existence of grounds for removal from the register in the period prior to removal¹¹.

If the above view of the Supreme Court were to be adopted and applied to the situation at hand, it would have to be concluded that a former partner of a general partnership, despite the existence of a substantive legal basis for the cessation of his/her membership in the partnership, could not rely on this fact before removal from the register and the making of the announcement. Instead, it would have to be assumed that the presumption of Article 17 of the Act on the National Court Register, as to which a third party (partner) cannot prove that the entry in the register was not true, is upheld¹². Such an interpretation seems difficult to accept, and as a result, the cited ruling of the Supreme Court has met with criticism in the doctrine, where attention has been drawn in particular to the argument that under Article 20 (4) of the Act on the National Court Register, the removal from a register shall also be deemed as the entry in the register, and there are no obstacles to rebutting the presumption of Article 17 of the Act on the National Court Register through available means of evidence¹³. However, this does not change the fact that the ruling was passed in the form of a resolution and was also reflected in subsequent case law¹⁴. Therefore,

¹¹ In doing so, the Supreme Court consistently refers to the moment of entry in the register of entrepreneurs, despite the fact that Article 15 (3) of the Act on National Court Register refers to the announcement of entry.

¹² The justification for the resolution suggests that the Supreme Court considers the presumption in Article 17 of the Act on National Court Register to be an irrebuttable presumption.

¹³ Aleksander J. Witosz, "Glosa do uchwały SN z 05.12.2008 r., III CZP 124/08," *Przebieg Sądowy*, no. 10 (2009): 137–138; Agnieszka Michnik, "Commentary to art. 15 of Act on National Court Register," in *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, ed. Agnieszka Michnik (Warsaw: Wolters Kluwer, 2013), paragraph 5.

¹⁴ Appellate Court in Szczecin, Judgment of 04.10.2021, Ref. No. I ACa 363/21, Legalis; Polish Supreme Court, Judgment of 10.03.2021, Ref. No. V CSKP 64/21, Legalis, in which the Supreme Court approved the view expressed in resolution III CZP 124/08, although it ultimately did not apply it to the case at hand, but due to a difference in the factual status.

there is a certain probability that in the event of a dispute between a creditor of the partnership and a former partner not removed from the register, the court reviewing the case will adopt a view analogous to that presented by the Supreme Court in the cited ruling.

Another possible course of action to protect the former partner is to notify the registry court of the partnership's failure to file the required documents in order to prompt the court to take action under Article 24 (1) of the Act on the National Court Register and summon the partnership as the party obliged to file the relevant application under penalty of a fine (Article 24 (1), (1b) and (2) of the Act on the National Court Register). Practical experience shows, however, that such actions do not yield quick results. Leaving aside the time taken by the registry courts to process such applications, in the context of the potentially multi-stage nature of this procedure, there is a risk that a long time may elapse between the former partner's action and the final disclosure of withdrawal from the partnership.

It should also be noted that the provision of Article 18 (1) of the Act on the National Court Register provides for liability of the registered entity for damage caused by failure to submit data subject to mandatory registration, based on the principle of strict liability¹⁵. This provision may form the basis of the partnership's liability towards the former partner. The scope of compensation may include, among other things, the costs of legal assistance incurred for the defense before the claims of partnership's creditor. In the event of losing a lawsuit brought by a creditor of the partnership against a former partner, e.g. as a result of the adoption by the court recognizing the case of the view expressed in the resolution of the Supreme Court of 05.12.2008, the compensation of the former partner would also include the amount ordered from that partner to the creditor of the partnership. In practice, however, this solution does not provide sufficient protection for the former partner. Since the partnership's creditor has decided to pursue claim against the partner, enforcement against the partnership must have

To a certain extent, the resolution III CZP 124/08 is also referred to in the judgment of Polish Supreme Court of 12.01.2022, Ref. No. II CSKP 212/22, Legalis.

¹⁵ Paweł Popardowski, "Commentary to art. 18 of Act on National Court Register," in *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, ed. Konrad Osajda (Warsaw: C. H. Beck, 2022), paragraph 5.

had been ineffective and therefore the former partner will not be able to enforce his/her claim against the partnership either. Although Article 18 (2) of the Act on the National Court Register extends the scope of the liability in question to persons liable for the partnership's obligations with all their assets, and therefore in a general partnership - to all current partners, but also from this perspective the level of protection is not sufficient¹⁶. The former partner is still exposed to the need to participate in a lawsuit brought by a creditor of the partnership, as well as the risk of losing the lawsuit and bearing the enforcement proceedings, and in return he/she only receives a potential opportunity to claim damages from the current partners.

An additional risk for the former partner arises from Article 778¹ of the Code of Civil Procedure¹⁷, which provides for the extended enforceability of an enforcement title issued against a partnership. This provision allows such a title to be appended with a writ of enforcement against a partner bearing liability without limitation with all his assets for the partnership's obligations, if enforcement against the partnership proves ineffective, as well as when it is obvious that enforcement will be ineffective. At the same time, an additional restriction has been introduced, according to which it is not possible to grant a writ of enforcement against a person who, at the time of the initiation of the proceedings in the case in which the enforcement title against the partnership was issued, was no longer a partner of the partnership¹⁸. The court reviewing the application for a writ of enforcement against the partner will therefore be required to verify the premise of ineffectiveness of enforcement against the partnership, as well as to determine whether the requested person is a partner¹⁹. The latter circum-

¹⁶ Aleksander J. Witosz comes to similar conclusions ("Wpis do rejestru," 19), considering the situation of a creditor who directs claims against a former partner who has not yet been removed from the register.

¹⁷ Code of Civil Procedure of 17.11.1964, consolidated text: Journal of Laws 2021, No. 1805.

¹⁸ This restriction was introduced as a result of a ruling by the Polish Constitutional Tribunal, which, in a judgment of 03.10.2017, Ref. No. SK 31/15 (OTK-A 2017, item 62) stated that Article 778¹ of the Code of Civil Procedure, to the extent that it allows the court to grant an enforcement title, issued against a general partnership, a writ of enforcement against a former partner of that partnership who is no longer a partner at the time of the initiation of proceedings in the case in which the enforcement title against the general partnership was issued, is inconsistent with Articles 45 (1) and 77 (2) of the Polish Constitution.

¹⁹ Kowalski, „Odpowiedzialność,” 42.

stance will be examined with consideration of Article 786 of the Code of Civil Procedure, which regulates the burden of proof in the procedure for issuing the writ of enforcement and requires the applicant to provide evidence in the form of an official document or private document with an officially certified signature. Such a document will undoubtedly be an extract from the register of entrepreneurs. Given the presumption of Article 17 of the Act on the National Court Register, there is no basis for imposing an obligation on either the applicant or the court to verify in any other way whether the data disclosed in the register is up-to-date. However, in this situation, there is also a risk that the partnership has not yet fulfilled its obligation to file an application for removal of the former partner from the register of entrepreneurs. Thus, at the stage of the enforcement proceedings, the former partner has no possibility to defend himself, because in such a situation the rules of civil procedure do not provide for a hearing of the person against whom the writ is to be issued. The only defenses that can be considered subsequently are a complaint against the decision to grant the writ of enforcement (Article 795 of the Code of Civil Procedure) or an adverse action to enforcement (Article 840 of the Code of Civil Procedure). The admissibility of the latter for partners in the case of enforcement titles against a partnership has been ruled out by the Supreme Court²⁰. What remains relevant, however, is the possibility of challenging the order granting a writ of enforcement on the grounds that one of the prerequisites indicated in Article 778¹ of the Code of Civil Procedure, concerning the fact of remaining a partner in a partnership, is not met²¹. However, it is likely that the former partner will obtain knowledge of the existence of the writ of enforcement and the possibility of filing a complaint only after the initiation of enforcement proceedings, which will expose him/her to additional

²⁰ Polish Supreme Court, Decision of 15.01.2021 r., Ref. No. II CSKP 4/21, Legalis; different position was presented by Paweł Grzegorzczak, “O związaniu wspólnika spółki jawnej wyrokiem zasądającym świadczenie wydanym przeciwko spółce,” *Polski proces cywilny*, no. 3 (2012): 500; see also: Paweł Popardowski, “Problematyka funkcjonowania spółek handlowych w obrocie gospodarczym na tle orzecznictwa Sądu Najwyższego z lat 2019–2021,” *Glosa*, no. 2 (2021): 8–13.

²¹ See also: Witosz, “Wpis do rejestru,” 19; Dagmara Olczak – Dąbrowska, “Commentary to art. 778 (1) of Code of Civil Procedure,” in *Kodeks postępowania cywilnego. Komentarz*, ed. Jerzy Szancilo (Legalis, Warsaw: C. H. Beck, 2019), paragraf 5.

costs and the need to participate in court proceedings. Also in this case, due to the previously cited Supreme Court resolution of 05.12.2008, the outcome of the proceedings is uncertain for the former partner.

It follows from the above remarks that the interest of a partner withdrawing from a partnership is significantly threatened, mainly due to the system of presumptions arising from the Act on the National Court Register. These regulations create the risk of holding a former partner liable for obligations that arose after his/her withdrawal from the partnership or, at the very least, exposing him/her to the risk of participating in lengthy litigation. In the past, *de lege ferenda* postulates have been formulated on the grounds of thematically related issues. Among them, there were two important proposals, the first of which concerned the introduction of a requirement of written form with an authenticated date for a contract transferring the rights and obligations in a partnership²², and the second involved the introduction of either an obligation or a right for the withdrawing partner to file an application to remove him/her from the register of entrepreneurs²³. However, as discussed in this article, the former concept does not provide a solution to the problem outlined, because the introduction of the requirement of written form with an authenticated date does not itself create sufficient motivation for the immediate disclosure of the change in the register of entrepreneurs and from the perspective of the reliability of business trading it is precisely this issue that is of the greatest importance. In addition, personal changes in partnerships also include situations other than the transfer of all the rights and obligations of a partner (e.g., unilateral termination of the partnership agreement). Therefore, the second of the referred solutions is more justified. In choosing between the two options presented, it should be concluded that, in order to safeguard the interests of the former partner, it would be sufficient to grant this

²² Kidyba, "Kilka uwag," 23; Janeta and Matysiak, "O potrzebie," 55.

²³ Grykiel, "Ochronna," 51; Janeta and Matysiak, "O potrzebie," 55; Daniel Dąbrowski, "Forma umowy przeniesienia ogółu praw i obowiązków w handlowej spółce osobowej," in *Restrukturyzacja przedsiębiorcy i jego przedsiębiorstwa*, ed. Michał Kuźnik, Aleksander J. Witosz, (Warszawa: C. H. Beck, 2018), 193; Witosz, "Wpis do rejestru," 20; Gorczyński, "Kilka uwag," 17. Regardless, the introduction of a time limit for the liability of the withdrawing partner was considered (Podleś, "Odpowiedzialność," 49–50). The view was also expressed that the existing solution is sufficient (Aslanowicz, "Zmiany," 23).

person the right (without imposing an obligation) to file an application for removal from the register of entrepreneurs. In order to decide whether this solution should be extended in some way, it is necessary to analyze the issue at hand from the perspective of protecting the interests of a creditor of the partnership.

3. Protection of the creditor of the partnership

In the situation under analysis, the need to protect the creditor's interests arises primarily from the fact that, as a result of the withdrawal of a partner from the partnership, for a certain period of time there is an inconsistency between the real state of affairs and that disclosed in the register of entrepreneurs. As a result, the data entered in the register temporarily ceases to be true, resulting in a violation of the principle of reliability of business trading. In order to find a way to protect the creditor's interests, one may consider the application of the aforementioned Article 14 of the Act on the National Court Register. In this context, it should be determined whether sufficient protection is granted to the creditor by the restriction relating to the partnership as an entity obliged to file an application for entry in the business register, and concerning the impossibility of invoking against *bona fide* third parties data that has not been entered into the register of entrepreneurs. The answer to such a question should be negative. The norm arising from Article 14 of the Act on the National Court Register provides a sufficient protection of the creditor's interests with regard to those applications that directly concern the interests of the partnership as the entity obliged to file the application. However, the situation is different with regard to a former partner who is not obliged to file an application and whose interests are divergent from those of the partnership and the current partners²⁴. Although the partnership is under a formal obligation to file an application within 7 days after the occurrence of any event justifying an amendment to the entry in the register (Article 22 of the Act on the National Court Register), and a breach of this obligation results in the possibility of liability for damage (Article 18 (1) and (2) of the Act on the National Court Register), but otherwise the partnership and the current partners have no direct interest in

²⁴ Also: Witosz, "Wpis do rejestru," 17–18.

removing the former partner from the register²⁵. Such action is relevant only from the perspective of communicating the withdrawal of a given partner from the partnership and the associated lack of liability for the partnership's obligations that arose from the moment of withdrawal to third parties.

As a result, there is a risk that the partnership will not file the required application, and consequently the creditor will not be able to benefit from the solutions provided for in Article 14 of the Act on the National Court Register, since the former partner is not the entity required to file the application for removal from the register. If, in addition, one were to reject the view of the Supreme Court expressed in the resolution of 05.12.2008 and, in accordance with the doctrinal postulates, allow for the possibility of applying Article 15 (3) of the Act on the National Court Register in such a situation, the former partner would be able to invoke, without any limitation a circumstance not entered in the register, which in this case is the fact of the partner's withdrawal from the partnership and the consequent cessation of his/her liability. This would constitute a significant weakening of the position of the creditor, against whom a partnership in a similar situation would not be able to invoke data not entered in the register within the meaning of Article 14 of the Act on the National Court Register. Such a situation is not justified, since the need to protect the creditor in the manner provided for in Article 14 of the Act on the National Court Register in relations with the former partner is supported by the same arguments that are relevant in relations with the partnership as the party obliged to file an application. This is related first and foremost to the principle of reliability of business trading, the manifestation of which is the need to ensure the timeliness of the data disclosed in the register of entrepreneurs, with measures to force obliged entities to update the data as soon as possible and at the same time to protect third parties in the event of failure to fulfill these obligations. In the context of the postulate formulated in the previous part of the article concerning granting a former partner the right to file an application for his/her removal from the register of entrepreneurs, it should be stated that in order to secure the interests of the partnership's creditor as a third party, it is desirable to extend the restriction of Article 14 of the Act on the National Court Register to this former partner as well, e.g. by

²⁵ Similar position was expressed by Gorczyński, "Kilka uwag," 17.

changing the scope of application of the norm and extending it to the entity obliged or authorized to file an application. At the same time it would be necessary to determine that in such a situation the former partner is not considered a third party within the meaning of Article 15 (3) of the Act on the National Court Register.

In addition, consideration may be given to introducing a regulation modeled on Article 626¹³ of the Code of Civil Procedure, providing for the obligation of the court to make an *ex officio* warning about the discrepancy between the state disclosed in the land and mortgage register and the actual state of affairs. From the perspective of the issues considered in this article, this is important for the reason that even if a partner withdrew from the partnership, e.g. as a result of the termination of the agreement or the transfer of all rights and obligations to another person, and then filed an application for removal from the register of entrepreneurs as a partner (part 7 of section 1 of the register of entrepreneurs), this person still does not have the means to force the current partners to adjust the partnership agreement to the new situation (e.g. in terms of the partnership's name), as well as to unify all data in the register of entrepreneurs. The mere removal of information about being a partner, while maintaining other data that may indicate the status of a partner, may be misleading and create a risk for the interests of other trading participants. In order to safeguard them, it would be sufficient to introduce an obligation for the registry court to enter a warning about the inconsistency of the state disclosed in the register with the actual state. This would be a clear signal that not all the data are up-to-date, and with a full analysis of the excerpt from the register of entrepreneurs, it would give a third party the opportunity to obtain information about the circle of persons being the partners of the partnership.

4. Final conclusions

The analysis of the title issue in the context of protecting the interests of the former partner of a partnership and the creditors of such a partnership leads to the conclusion that in order to ensure the implementation of the principle of reliability of business trading to a higher degree, it is desirable to introduce two types of changes. On the one hand, in order to ensure the protection of the interests of the former partner, this person should be given the right to file an application for his/her removal from the register.

This would be of importance, in particular, in a situation in which the partnership fails to fulfill this obligation. On the other hand, in order to ensure the protection of the interests of the partnership's creditor, the scope of application of Article 14 of the Act on National Court Register should be extended by including the former partner of a partnership. With such a solution, a former partner would have to reckon with the fact that if he/she failed to file an application, this person would not be able to invoke his/her withdrawal from the partnership against its creditor. Such a solution would provide sufficient incentive for a partner to ensure that the data in the register of entrepreneurs is updated, which in turn would ensure more complete implementation of the principle of reliability of business trading. From the perspective of creditors, in turn, it would allow them to ensure that their interests are protected and that their claims can also be asserted against a partner who neglected to take steps to update the data.

References

- Aślanowicz, Marcin. "Zmiany w składzie wspólników spółek partnerskich oraz pozostałych osobowych spółek handlowych." *Prawo spółek*, no. 1 (2000): 20–27.
- Dąbrowski, Daniel. "Forma umowy przeniesienia ogółu praw i obowiązków w handlowej spółce osobowej." In *Restrukturyzacja przedsiębiorcy i jego przedsiębiorstwa*, edited by Michał Kuźnik and Aleksander J. Witosz, 18–194. Warszawa: C.H. Beck, 2018.
- Dębska, Monika. "Commentary to art. 15 of Act on National Court Register." In *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, edited by Monika Dębska, paragraphs 1–2. Warsaw: Lexis Nexis, 2013.
- Frąckowiak, Józef. "O niektórych zagrożeniach dla handlowych spółek osobowych – szczególnie spółki jawnej." *Przegląd Prawa Handlowego*, no. 9 (2012): 14–20.
- Gorczyński, Grzegorz. "Kilka uwag o tzw. zbyciu członkostwa w handlowych spółkach osobowych." *Prawo spółek*, no. 7–8 (2001): 13–23.
- Grykiel, Jarosław. "Ochronna funkcja rejestru przedsiębiorców na przykładzie wpisów dotyczących spółek handlowych." *Przegląd Prawa Handlowego*, no. 12 (2012): 43–52.

- Grzegorzczuk, Paweł. "O związaniu wspólnika spółki jawnej wyrokiem zasądającym świadczenie wydanym przeciwko spółce." *Polski proces cywilny*, no. 3 (2012): 491–500.
- Herbet, Andrzej. "Odpowiedzialność wspólników za zobowiązania handlowych spółek osobowych – zagadnienia materialnoprawne." *Rejent*, no. 6/146 (June 2003): 41–77.
- Janeta, Jakub and Wiktor P. Matysiak. "O potrzebie reformy prawa spółek w zakresie regulacji spółek osobowych." *Przegląd Prawa Handlowego*, no. 9 (2012): 53–58.
- Kidyba, Andrzej. "Kilka uwag o potrzebie zmian przepisów regulujących spółki osobowe." *Przegląd Prawa Handlowego*, no. 9 (2012): 21–25.
- Kuniewicz, Zbigniew. Gloss to the resolution of Polish Supreme Court of 05.12.2008 r., III CZP 124/08, OSP 2010/1/1.
- Kozieł, Grzegorz. "Zakres przedmiotowy i podmiotowy przeniesienia praw i obowiązków wspólnika handlowej spółki osobowej." *Przegląd Prawa Handlowego*, no. 12 (2003): 39–44.
- Kowalski, Sebastian. "Odpowiedzialność wspólników spółki jawnej za zobowiązania spółki." *Prawo spółek*, no. 7–8 (2003): 40–48.
- Michnik, Agnieszka. "Commentary to art. 14 of Act on National Court Register." In *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, edited by Agnieszka Michnik, paragraphs 1–7. Warsaw: Wolters Kluwer, 2013.
- Michnik, Agnieszka. "Commentary to art. 15 of Act on National Court Register." In *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, edited by Agnieszka Michnik, paragraphs 1–5. Warsaw: Wolters Kluwer, 2013.
- Nowacki, Andrzej. "Jawność materialna Krajowego Rejestru Sądowego." *Prawo Spółek*, no. 5 (2007): 36–43.
- Nita – Jagielski, Grzegorz. "Commentary to art. 22 of Commercial Companies Code." In *Kodeks spółek handlowych. Komentarz*, edited by Jacek Bieniak, paragraphs 1–37. Warsaw: C. H. Beck, 2022.
- Popardowski, Paweł. "Commentary to art. 14 of Act on National Court Register." In *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, edited by Konrad Osajda, paragraphs 1–8. Warsaw: C. H. Beck, 2022.
- Popardowski, Paweł. "Commentary to art. 18 of Act on National Court Register." In *Ustawa o Krajowym Rejestrze Sądowym. Komentarz*, edited by Konrad Osajda, paragraphs 1–19. Warsaw: C. H. Beck, 2022.
- Podleś, Marcin. "Odpowiedzialność wspólnika spółki jawnej wobec osób trzecich po wystąpieniu ze spółki za zobowiązania ze stosunków ciągłych." *Przegląd Prawa Handlowego*, no. 9 (2017): 47–51.

- Popardowski, Paweł. "Problematyka funkcjonowania spółek handlowych w obrocie gospodarczym na tle orzecznictwa Sądu Najwyższego z lat 2019–2021." *Glosa*, no. 2 (2021): 7–18.
- Olczak – Dąbrowska, Dagmara. "Commentary to art. 778 (1) of Code of Civil Procedure." In *Kodeks postępowania cywilnego. Komentarz*, edited by Jerzy Szanciło, paragraphs 1–7. Warsaw: C. H. Beck, 2019.
- Wiśniewski, Andrzej. "Kilka uwag w sprawie reformy prawa osobowych spółek handlowych." *Przegląd Prawa Handlowego*, no. 9 (2012): 26–30.
- Witosz, Aleksander J. "Gloss to the resolution of Polish Supreme of 05.12.2008 r., III CZP 124/08." *Przegląd Sądowy*, no. 10 (2009), 130–141.
- Witosz, Aleksander J. "Wpis do rejestru a odpowiedzialność wspólnika spółki osobowej." *Prawo spółek*, no. 7–8 (2009): 13–22.