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The evolution of the cooperatives' representation model. From the 1920 Act on Cooperatives to modern legislation

Ewolucja modelu reprezentacji spółdzielni. Od ustawy o spółdzielniach z 1920 r. do współczesnej regulacji

Эволюция модели представительства кооперативов. От Закона о кооперативах от 1920 года до современного правового регулирования

Еволюція моделі представництва кооперативу. Від закону про кооперативи з 1920 р. до сучасного регулювання

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Summary: This paper presents the evolution of Polish cooperative-related legislation concerning representation over the past hundred years. It discusses the relevant provisions of the Act on Cooperatives of 29 October 1920, the Act on Cooperatives and Their Unions of 17 February 1961 and the Cooperative Law of 16 September 1982. The study showcases such things as the evolution of the concept of the management board as either a collective or one-person body and the development of the rules of (joint) representation; it also shows how statutory limitations on the management board's power to represent cooperatives have changed over the last century. Yet another mentioned aspect is the evolution of cooperative law concerning (commercial) proxy. This study aimed to determine which aspects of modern legislation should be assessed positively, and which require improvement and amendments. The analysis led to some conclusions (including *de lege ferenda*) concerning the optimal representation model of cooperatives.

Key words: cooperative, representation, management board, member of the management board, supervisory board, attorney-in-fact, power of attorney, commercial proxy

Streszczenie: W niniejszym opracowaniu omówiono podstawowe kierunki rozwoju polskiego prawa spółdzielczego w obszarze reprezentacji na przestrzeni ostatnich stu lat. W tym celu uwzględniono regulacje przewidziane w ustawie z dnia 29 października 1920 r. o spółdzielniach, ustawie z dnia 17 lutego 1961 r. o spółdzielniach i ich związkach, a także ustawie z dnia 16 września 1982 r. – Prawo spółdzielcze. Przedstawiono m.in. ewolucję koncepcji zarządu jako organu kolegialnego lub jednoosobowego, omówiono zasady reprezentacji spółdzielni w ujęciu historycznym; pokazano ponadto, jak w ciągu ostatnich stu lat zmieniały się uprawnienia zarządu w zakresie reprezentacji spółdzielni i występujące w tym obszarze (ustawowe) ograniczenia. Celem niniejszego opracowania było także ukazanie ewolucji polskiej regulacji spółdzielczej w zakresie prokury. Prowadzone rozważania doprowadziły do wniosków dotyczących tego, które aspekty (obszary) nowoczesnej regulacji spółdzielczej zasługują na pozytywną ocenę, które zaś wymagają udoskonalenia, co pozwoliło na sformułowanie odpowiednich wniosków (także *de lege ferenda*) co do optymalnego kształtu przyszłej regulacji spółdzielczej w zakresie reprezentacji.

Słowa kluczowe: spółdzielnia, reprezentacja, zarząd, członek zarządu, rada nadzorcza, pełnomocnik, pełnomocnictwo, prokura

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Резюме: В данной статье рассматриваются основные изменения польского кооперативного законодательства в области представительства за последние сто лет. Для этого были учтены положения, предусмотренные Законом о кооперативах от 29 октября 1920 года, Законом о кооперативах и их союзах от 17 февраля 1961 года и Законом от 16 сентября 1982 г. – Кооперативное право. Среди прочего, представлена эволюция концепции правления в виде коллегиального или единоличного органа, а также рассмотрены принципы представительства кооперативов в историческом аспекте; показано, как менялись полномочия правления по представлению кооперативов и (законодательные) ограничения в этой области за последние сто лет. Целью данного исследования было также показать эволюцию польского кооперативного регулирования в области прокуры. Проведенные рассуждения позволили сформулировать выводы о том, какие аспекты (области) современного кооперативного регулирования заслуживают положительной оценки, а какие требуют совершенствования, что позволило сформулировать соответствующие выводы (в том числе *de lege ferenda*) об оптимальной форме будущего кооперативного регулирования в сфере представительства.

Ключевые слова: кооператив, представительство, правление, член правления, наблюдательный совет, доверенное лицо (прокурист), полномочия (прокура)

Резюме: У дослідженні розглядаються основні напрями розвитку польського кооперативного права у сфері представництва за останні сто років. З цією метою були враховані норми, передбачені законом про кооперативи від 29 жовтня 1920 р., законом від 17 лютого 1961 р. про кооперативи та їх спілки, а також законом від 16 вересня 1982 р. – Кооперативний закон. Представлено серед інших, еволюцію концепції управління як колективного так одноособового органу, а також історичне представлення кооперативів; крім того, було показано, як змінилися повноваження правління щодо представництва кооперативів та (статутні) обмеження в цій сфері за останні сто років. Метою цього дослідження було також показати еволюцію польського кооперативного регулювання у сфері прокури. Проведені міркування дозволили сформулювати висновки щодо того, які аспекти (сфери) сучасного регулювання кооперації заслуговують на позитивну оцінку, а які потребують вдосконалення, що дозволило сформулювати відповідні висновки (в тому числі *de lege ferenda*) щодо оптимального майбутнього кооперативного права відносно представництва.

Ключові слова: кооператив, представництво, правління, член правління, наглядова рада, довірена особа, довіреність, прокура

Introduction

The representation model of cooperatives has evolved over the past hundred years. The issue in question, concerning submitting and receiving declarations of intent, is fundamental for the (proper) functioning of cooperatives as legal entities. The decision to raise this issue and develop an analysis related thereto is based on the observation that multiple institutions of historic and modern legislation concerning the representation of cooperatives are largely similar. This applies particularly to the regulation of declarations of intent submitted on behalf of a cooperative. Notably, the fundamental design of the cooperatives' representation model has been based on identical elements and assumptions over the last hundred years: (1) the rule of joint representation, (2) statutory limitation on the management board's power to represent the cooperative in specific areas (specified by the law) and (3) the author-

isation of the management board to appoint attorneys-in-fact. Because of that, any arising structural and theoretical problems tend to be identical as well, specifically those concerning the legal nature of joint representation, the effectiveness of (statutory) limitations of the management board's power to represent the cooperative, or interaction between mixed joint representation and general representation.

The foundations for the Polish cooperative law were established by the Act on Cooperatives of 29 October 1920[1] which entered into force in 1921. The Act provided for a regulation according to which a cooperative was obliged to establish a management board. In his commentary on the Act on Cooperatives, Professor Stanisław Wróblewski – an outstanding Polish lawyer and scientist – noted that "the main competency of the management board consists of representing the cooperative"; in his opinion, even though the management board indubitably also runs the cooperative's affairs, "the power to represent [the cooperative] remains its core feature."[2] Professor Wróblewski also recalled that, in principle, the management board is exclusively authorised to represent the cooperative, and as such, other cooperative's bodies are deprived of this competency unless the law provides otherwise. The dualism of the management board's competencies and also the concept of (almost) exclusive empowerment of the management board to represent a cooperative are present in all Polish legislation concerning cooperatives adopted after the Second World War, i.e. the Act on Cooperatives and Their Unions of 17 February 1961[3] and the Cooperative Law of 16 September 1982.[4] The fundamental principles concerning the management board and the cooperative's legal structure – established in the Act on Cooperatives (1920) – determined every subsequent regulation and remained valid until modern times. Nonetheless, the Polish legislation concerning cooperatives did change over time, albeit in more detailed areas (aspects).

To begin with, one can observe an evolution of the concept of the management board as a collective or one-person body and a significant development of the rules of representation. Primarily, in the 1920 Act on Cooperatives, the legislator authorised the appointment of one-person management boards, as well as boards comprising several members. Only cooperatives accepting contributions were obliged to establish a management board consisting of two members (Article 33 Section 2 of the Act on Cooperatives). According to Article 35 Section 2 of the Act, in cases where the management board was not a one-person body, the declarations of will on behalf of

1 Journal of Laws 1920 [Dziennik Ustaw] no. 111, item 733.

2 See: S. Wróblewski, *Ustawa o spółdzielniach z dnia 29 października 1920 (Dz. U. Nr 111, poz. 733) wraz z rozporządzeniami wykonawczemi*, Kraków 1921, p. 51.

3 Journal of Laws 1961 no. 12, item 61.

4 Journal of Laws 1982 no. 30, item 210, consolidated text: Journal of Laws 2021 item 648.

the cooperative had to be made by at least two members of the management board, unless the statute required the cooperation of a greater number of management board members. In the Act on Cooperatives (1920), the legislator did not explicitly provide for rules of representation in the case of a one-person management board. Yet this provision also brought an implicit rule: if the management board had only one member, then only that board member was authorised to act on behalf of the cooperative individually. A significant change was introduced by the provisions of the Act on Cooperatives and Their Unions (1961). Pursuant to Article 45 Section 1 of the above Act, the management board had to consist of at least three members. Moreover, pursuant to Article 47 Section 1 of the Act on Cooperatives and Their Unions, declarations of will regarding property rights and obligations were to be made by at least two members of the management board or by one member of the board acting jointly with a person authorised by the management board (attorney-in-fact).[5] The original version of the Cooperative Law (dated 1982) duplicated the aforementioned provisions. A new approach was introduced in 1995: the appointment of a one-person management board has been (once again) admissible. The law (in its current version) provides for different rules of representation depending on the size of the management board (i.e. depending on whether the management board comprises one or several members). According to Article 54 Section 1 of the Cooperative Law, declarations of will on behalf of the cooperative must be made by two members of the management board or by one member of the management board acting jointly with an attorney-in-fact. In cooperatives with a one-person management board, a declaration of will may also be submitted by two attorneys-in-fact. The above legal provision may raise doubts since, among other things, it is unclear whether the rule of joint representation (involving a management board member and an attorney-in-fact) also applies to a one-person management board. A reasonable interpretation of Article 54 Section 1 of the Cooperative Law is as follows: if a one-member management board is established, declarations of will (representations) on behalf of the cooperative shall be made by the president of the management board (acting individually) or by two attorneys-in-fact (acting jointly). On the other hand, in cases where the management board comprises several members, the cooperative shall be represented by two members of the management board or by one member of the management board acting jointly with an attorney-in-fact.[6] The above rule of joint representation (referring to management boards comprising several members) results from mandatory provisions of the law. Therefore, the statute cannot differ from these provisions. *De lege ferenda*,

5 More on this subject: M. Gersdorf, *Zarząd spółdzielni w systemie jej organów*, Warszawa 1976.

6 See: A. Zbiegień-Turzańska, *Reprezentacja spółek kapitałowych i spółdzielni*, Warszawa 2018, p. 41.

the rule of joint representation that applies to management boards numbering several members shall no longer be mandatory. The legislator should make it possible to introduce the rule of individual representation (valid also for management boards comprising several members) through the statute.[7] On the other hand, the observed evolution of the law and the reintroduction of the possibility to establish a one-person management board (and not only a board consisting of several members) should be viewed positively.[8] In this respect, the current provisions of the Cooperative Law refer to the idea expressed in the Act on Cooperatives (1920).

1. Joint representation

Another concept that has evolved over the past hundred years is the idea of joint representation. The Act on Cooperatives (1920) provided for 'pure' joint representation involving two representatives of the same kind, i.e. two management board members. This changed upon the entry into force of the Act on Cooperatives and Their Unions (1961); its provisions regulated not only joint representation executed by two members of the management board but also introduced the so-called mixed joint representation which involves two persons of different legal status, i.e. a management board member and an attorney-in-fact. Also the current version of the Cooperative Law provides for 'pure' and 'mixed' joint representation. The mutual relation between Article 54 and Article 55 of the Cooperative Law remains unclear; among other things, it is disputed whether the concept of mixed joint representation refers to a specific type of power of attorney stipulated in Article 55 of the Cooperative Law. All doubts aside, it should be assumed that as of today the so-called

7 See also Article 205 Section 1, Article 300 (66) Section 1 and Article 373 Section 1 of the Commercial Companies Code of 15 September 2000, consolidated text: Journal of Laws 2022 item 1488 (hereinafter referred to as CCC). Commercial companies (limited liability companies, joint stock companies and simple joint stock companies) can be represented by a management board member acting individually, including in cases where the board comprises several members, if the statute provides for such a regulation. Such an approach is also present in German cooperative law. See Article 25 Section 1 of the German regulation Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Genossenschaftsgesetz, (hereinafter reffered to as GenG). *Die Mitglieder des Vorstands sind nur gemeinschaftlich zur Vertretung der Genossenschaft befugt. Die Satzung kann auch bestimmen, dass einzelne Vorstandsmitglieder allein oder in Gemeinschaft mit einem Prokuristen zur Vertretung der Genossenschaft befugt sind.*

8 See also Article 201 Section 2, Article 300 (62) Section 2 and Article 368 Section 2 of the CCC. According to these regulations, management boards of commercial companies can consist of one or more members.

mixed joint representation involves a management board member and (preferably) an attorney-in-fact authorised (pursuant to Article 55 Section 1 of the Cooperative Law) to engage in legal actions associated with managing (running) the cooperative's day-to-day business or its organised unit. Yet given the common practice of disclosure in the National Court Register of information on attorneys-in-fact who have been issued special powers of attorney, such persons should also participate in the process of statutory representation of cooperatives. Lastly, even though such a conclusion does not directly arise from the respective provisions of the Cooperative Law, a member of the management board may also act jointly with a (commercial) proxy.

Moving on to other matters, the concept of mixed joint representation also calls for a reflection on the scope of authority extended to an attorney-in-fact engaging in legal actions jointly with a management board member. It should be assumed that the analysed phenomenon is a type of representation exercised by the management board. As a consequence of that, where mixed joint representation applies, an attorney-in-fact is empowered to engage in all legal actions, i.e. all judiciary and non-judiciary actions, except for actions reserved for the competency of other authorities. Therefore, the scope of authority granted to an attorney-in-fact who exercises mixed joint representation (provided for under Article 54 Section 1 of the Cooperative Law) exceeds the scope of the given power of attorney and corresponds to the boundaries within which a cooperative management board may take actions on the cooperative's behalf.[9]

2. Statutory limitation of the management board's power to represent the cooperative

The representation model of cooperatives has also evolved in terms of legal relations with management board members. Polish legislators noticed the potential conflict

[9] Such a position was presented by the Supreme Court in a resolution of 8 October 2004, V CK 76/04, OSNC 2005, no. 10, item 175. This also applies to mixed joint representation of commercial companies. According to the Supreme Court, under circumstances of mixed joint representation, a proxy is empowered to engage in legal actions identical to those pursued by a management board member, i.e. all judiciary and non-judiciary actions by a company, except for those reserved to other authorities. Consequently, a capital company management board member and proxy, acting jointly, can dispose of an enterprise, offer it up for temporary use, or encumber or dispose of real estate; nonetheless, Article 109^3 of the Civil Code derogates such actions from the scope of authority issued to a proxy.

of interest as early as 1920. Thus, according to Article 41 Section 3 of the Act on Cooperatives, the supervisory board was authorised to conclude, on behalf of the cooperative, any contracts with members of the management board and to conduct proceedings against them, unless the general assembly appointed attorneys-in-fact for this purpose. The Act on Cooperatives and Their Unions (1961) brought a new approach to special rules of representation since its Article 41 Section 1 point 7 authorised the supervisory board to adopt resolutions on any legal actions between the cooperative and management board members, as well as to represent the cooperative in these actions; the Act allowed a cooperative to be represented by two members of the supervisory board authorised to do so.[10] The modern legislation concerning special rules of representation is based on the above provisions of the Act on Cooperatives and Their Unions (1961). In Article 46 Section 1 point 8 of the Cooperative Law, the legislator states that the supervisory board represents the cooperative not only when performing legal acts between the cooperative and a member of its management board, but also when carrying out legal acts in the interest of a management board member. The Cooperative Law also duplicates the mechanism of representation performed by the supervisory board which involves two authorised board members. In general, the evolution of the representation model in legal relations with management board members should be viewed positively. In Article 46 Section 1 point 8 of the Cooperative Law, much like in Article 41 Section 1 point 7 of the Act on Cooperatives and Their Unions (1961), the legislator refers to all legal acts between the cooperative and a management board member and not only contracts, as it was the case in the 1920 Act on Cooperatives (its exact wording). Therefore, when representing the cooperative, today's supervisory boards are entitled not only to conclude contracts with a management board member, but also to perform unilateral legal acts aimed at changing or terminating such contracts, and finally, to receive declarations of intent from board members, particularly declarations of resignation from the post. Notably, one should appreciate that modern legislation defines the rules of representation performed by the supervisory board; the legislator specifies that a declaration of intent on behalf of the cooperative can be expressed by two appointed (authorised) members of the supervisory board. Such regulation indubitably facilitates the conclusion of contracts with management board members. It is, however, regrettable that modern legislation does not explicitly authorise the supervisory board to represent the cooperative in court proceedings against management board members. *De lege lata*, such

[10] More on this subject: M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze. Komentarz*, Warszawa 1966, pp. 128–132.

empowerment of the board requires a creative interpretation of Article 46 Section 1 point 8 of the Cooperative Law. *De lege ferenda,* the above-mentioned provision should be expanded and ought to also cover court (and out-of-court) proceedings involving the cooperative and its management board members.[11]

The statutory limitation of the management board's power to represent the cooperative does not always lead to a definitive deprivation of competency in the process of submitting declarations of intent. Another possible solution could be to limit the management board's power by requiring joint representation (as discussed above) or another authority's approval (i.e. the consent of the supervisory board or general assembly). Such an obligation to obtain additional approval can be introduced either through legal provisions or by force of the statute. The Act on Cooperatives (1920) provided for a regulation according to which the management board was to comply with limitations stipulated in the statute or imposed by a resolution of the general assembly (Article 35 Section 1 of the aforementioned Act). Furthermore, as stated in Article 35 Section 3 of the Act on Cooperatives, insofar as the limitation of the scope of the management board's empowerment did not arise from the respective provisions of the law, this limitation had an effect in relation to third parties only if the limitation was included in the statute, registered and announced. The Act on Cooperatives (1920) imposed the rule of joint representation (applicable to several-members management boards) which can be seen as a limitation of the powers granted to management board members. The Act did not impose any requirement in terms of additional approval to be issued by cooperative's authorities other than the management board. S. Wróblewski raised the following argument: "embracing in the respective provisions of the law a list of activities that the management board cannot undertake on its own always carries the risk that these restrictions will be excessive for some types of cooperatives and insufficient for others."[12] A different solution was introduced by the provisions of the Act on Cooperatives and Their Unions (1961): Article 34 Section 1 point 6 and Article 41 Section 1 point 4 imposed mandatory approval of the general assembly or the supervisory board for real estate and business transactions, as well as for acts exceeding the scope of ordinary management. Furthermore, as stated in Article 7 Section 1 point 7 of the above Act, a cooperative's entry into the register had to contain the limitations of the management board's powers as provided for in the statute or in the resolutions

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11 See also Article 210 Section 1, Article 300 (67) Section 1 and Article 379 Section 1 of the CCC. According to these regulations, the supervisory board of commercial companies represents the company not only when concluding contracts with management board members, but also in disputes between the company and its management board members.

12 See: S. Wróblewski, *Ustawa o spółdzielniach*…, p. 59.

of the general assembly, and in principle, such limitations had an effect in relation to third parties. The original version of the Cooperative Law duplicated many of the solutions imposed by the Act on Cooperatives and Their Unions. Today, pursuant to Article 38 Section 1 point 5 and Article 46 Section 1 point 3 of the Cooperative Law, real estate and enterprise-related transactions require the consent of the general assembly or the supervisory board.[13] The fact that modern legislation no longer refers to "acts exceeding the scope of ordinary management" (see Article 41 Section 1 point 4 of the Act on Cooperatives and Their Unions) should be viewed positively since this concept is vague and unclear. Engaging in legal action without having secured the statutorily required (meaning: by force of the law) consent of an authority other than the cooperative management board may bring significant consequences. According to Article 39 Section 1 of the Civil Code, if a person executing a contract as a body of a legal person has no authorisation or exceeds its scope, the validity of the contract depends on it being confirmed by the legal person on whose behalf the contract was executed.[14] The other party may give the legal person on whose behalf the contract was executed an appropriate time limit to confirm the contract and shall be free once this time limit has expired to no effect (Article 39 Section 2 of the Civil Code).[15] Engaging in legal action without the consent of the supervisory board or the general assembly, as required according to Article 38 Section 1 point 5 and Article 46 Section 1 point 3 of the Cooperative, must be viewed as exceeding the scope of the given authorisation within the meaning of Article 39 of the Civil Code. Today, any other restrictions on the management board's power to represent the cooperative (i.e. ones not resulting from the respective provisions of the law) have no effect in relation to third parties. The evolution of the representation model

13 Similar rules apply to commercial companies. See Article 228 point 3 and 4, Article 300 (81) point 2 and 3, Article 393 point 3 and 4 of the CCC.

14 Previously, before the amendment of Article 39 of the Civil Code, the analysed issue was interpreted differently. According to the Supreme Court's resolution (7) of 14 September 2007 (III CZP 31/07, OSNC 2008, no. 2, item 14), an agreement entered into by a management board of a cooperative without having secured the resolution of a general assembly or supervisory board required for such agreement's validity shall be subject to provisions of Article 103 Section 1 and 2 of the Civil Code. A contrary view was also present in the jurisprudence, which provided that a contract concluded without the consent of the general assembly — as required by law — is invalid. See also: S. Sołtysiński, *Skutki działań piastunów wadliwego składu zarządu lub rady nadzorczej w spółkach kapitałowych oraz spółdzielniach*, in: *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*, eds. L. Ogiegło, W. Popiołek, M. Szpunar, Kraków 2005, p. 1367.

15 Should no confirmation be provided, the person that executed the contract as a body of a legal person must return anything he or she received from the other party as part of performance of the contract and remedy any damage which the other party suffers by executing the contract while being unaware that no authorisation has been granted or that its scope has been exceeded (Article 39 Section 3 of the Civil Code).

deserves a positive assessment in this respect. Limitations imposed by force of the statute or by resolutions of the general assembly should not affect the validity of legal acts carried out by cooperatives. As regards the development of economic relations, it is possible to identify transactions that potentially affect the interests of a (typical) cooperative, and as such, require stronger protection.

3. Other representatives

The statutory model of representation (which involves the management board) does not affect the admissibility of representation based on general provisions of the law. Regardless of the applicable rules of representation, a cooperative can be thus represented by attorneys-in-fact acting individually or jointly. This also applies to cooperatives that have established a management board comprising several members, which involves joint representation (pursuant to the mandatory legal provisions). The above concept was already present in the 1920 Act on Cooperatives. According to Article 39 Section 1 (40), the management board was authorised to appoint attorneys-in-fact either to run the entire enterprise or branch or to perform certain types of legal acts. A similar regulation was provided for in the provisions of the Act on Cooperatives and Their Unions (1961) – see Article 48 Section 1 of the said Act. A more specific approach was introduced in Article 55 Section 1 of the Cooperative Law, which stated that the management board may grant one of its members or another person (a third party) the power of attorney to engage in legal actions associated with managing (running) the cooperative's day-to-day business or its organised unit, as well as special or extraordinary powers of attorney. While the modern legislation does not explicitly refer to the concept of enterprise – as set forth in the provisions of the Act on Cooperatives (1920) and the Act on Cooperatives and Their Unions (1961) – the meaning of the analysed regulation remains the same: the power of attorney authorising one to manage the cooperative's day-to-day business must be associated with the empowerment to run the cooperative's enterprise. What seems more significant is the change in the modern approach toward the so-called double empowerment of management board members which occurs once such members have been issued powers of attorney. Considering the unambiguous content of Article 55 Section 1 of the Cooperative Law, the legislator permits the assignment of both general and special or extraordinary powers of attorney to individual members of management boards comprising several persons. The power of attorney (issued pursuant to the above provision) may authorise one

to act individually. Because of that, a single person will simultaneously be obliged to act jointly as a management board member (with another management board member or attorney-in-fact) and individually within the scope of the given power of attorney. It must be stressed that the rule of joint representation remains indubitably valid, albeit at another level – that of respective rights exercised by the cooperative's body (i.e. management board).

The cooperative's representation model has seen significant changes in terms of a (commercial) proxy over the last hundred years. The Act on Cooperatives (1920) provided for a ban on issuing such proxy powers (see Article 39 Section 2). S. Wróblewski raised the argument that "cooperatives should not engage in speculative and risky activities to the extent that other traders do."[16] The Act on Cooperatives and Their Unions (1961) did not explicitly include such prohibition since the concept of (commercial) proxy practically did not exist during the communist era, with some exceptions relating to certain forms of commercial companies. Today, Article 55 of the Cooperative Law mentions different types of power of attorney but does not explicitly refer to a (commercial) proxy. The problem must be examined from a broader perspective involving general provisions of the Civil Code. It is undisputed that a cooperative must be considered a registered entrepreneur within the meaning of Article 43^1 of the Civil Code. The omission of (commercial) proxy in Article 55 Section 1 of the Cooperative Law is a natural consequence of the legal design of representation rules applicable to cooperatives. *Verba legis*, mixed joint representation established in Article 54 of the Cooperative Law involves an attorney-in-fact, and not a proxy, as has already been noted. Thus, Article 55 Section 1 of the Cooperative Law ought to be treated as a directional regulation, which determines whether the issuing of powers of attorney is admissible; however, it fails to normalise related matters in full. Under the *status quo*, Article 55 Section 1 of the Cooperative Law requires interpretation in conjunction with general provisions of the law (i.e. Civil Code). Therefore, today's interpretation of the Cooperative Law requires the assumption that a cooperative is authorised to grant a (commercial) proxy. The evolution of law that has led to this conclusion must be assessed positively.

Another issue worth mentioning is the admissibility of granting a proxy to a management board member which, in practice, would only apply to boards comprising several members. Although Article 55 Section 1 of the Cooperative Law does not explicitly refer to such an option, it should be assumed that a management board member can be granted commercial proxy rights. As a registered

16 See: S. Wróblewski, *Ustawa o spółdzielniach*…, p. 63.

entrepreneur, a cooperative is authorised to grant a commercial proxy.[17] The omission of this institution in Article 55 Section 1 of the Cooperative Law is a natural consequence of the actual design of representation rules applicable to cooperatives. The argument that there exist no rational reasons for granting a (commercial) proxy to a management board member who is obliged to observe the rule of joint representation is unconvincing. The motives behind such an action primarily involve the intent to avoid the requirement of group representation (performed jointly by two management board members or a board member and an attorney-in-fact). If the joint representation rule applies, a management board member who was granted an autonomous proxy may act on behalf of the cooperative alone, as opposed to its other officers. Furthermore, a ban on issuing a (commercial) proxy to office holders would undermine the status of cooperative administrators who usually enjoy the greatest trust, unlike third parties. Consequently, the modern interpretation of the Cooperative Law requires the assumption that granting a commercial proxy to a management board member (who is obliged to represent the cooperative jointly with another management board member) is admissible.

Conclusion

As noted in the introduction, some aspects of modern legislation deserve praise, whereas others still require improvement and amendment. To begin with the positives, the possibility of establishing either a single- or a multi-member management board deserves approval. Maintaining the requirement to appoint a management board comprising several members is unreasonable, given the diverse needs of cooperatives, as well as their sizes, activity types, etc. In this respect, the current provisions of the Cooperative Law refer to the idea expressed in the 1920 Act on Cooperatives. Also praiseworthy is the fact that the modern Cooperative Law explicitly regulates, and thus legalises, the granting of power of attorney to a management board member who is obliged to observe the rule of joint representation. This phenomenon is called 'double empowerment'. It must be stressed that a power of attorney given to management board members may authorise them to act individually. As such, a single person will be obliged to act jointly as a member of the

[17] This concept is disputed in relation to commercial companies. The Supreme Court ruled out the possibility of granting a commercial proxy to a management board member in its Resolution (7) of 30 January 2015, III CZP 34/14, OSNC 2015, no. 7–8, item 80. Earlier, in its resolution of 24 April 2014, III CZP 17/14, OSNC 2015, no. 2, item 17, the Supreme Court presented a different view.

management board while also being authorised to act individually within the scope of the granted power of attorney.

Another positive aspect of the modern legislation is also the broad representation competencies granted to the supervisory board in legal relations with management board members. Consequently, when representing cooperatives, today's supervisory boards are entitled not only to conclude contracts with management board members but also to perform unilateral legal acts aimed at changing or terminating such contracts, as well as to receive declarations of intent from board members. As regards other matters, one must also appreciate that the modern legislation defines the rules of representation by the supervisory board – the legislator specifies that a declaration of intent on behalf of the cooperative can be expressed by two appointed (authorised) members of the supervisory board. Such regulation indubitably facilitates the conclusion of contracts with management board members.

Lastly, the evolution of the concept of how to limit the management board's powers to represent the cooperative and how such limitations influence the validity of legal acts performed by the cooperative should also be viewed positively. As of today, any restrictions on the management board's empowerment to represent the cooperative that does not result from the respective provisions of the law have no effect in relation to third parties. This solution is based on the correct assumption that limitations imposed by force of the statute or by resolutions of the general assembly should not affect the validity of legal acts that cooperatives engage in. On the other hand, the modern Cooperative Law provides for a regulation under which specific types of transactions that may significantly affect the cooperative's activity (i.e. real estate and enterprise-related transactions) require the consent of the general assembly or the supervisory board. The consequences of engaging in legal action without having secured the statutorily required (meaning: by force of the law) approval of an authority other than the management board must be assessed in accordance with Article 39 of the Civil Code since doing so may be deemed to exceed the scope of the authorisation granted within the meaning of the above Civil Code provision.

The statutory model of representation requires improvement and amendment in some areas. *De lege ferenda*, the rule of joint representation (applicable to multi-member management boards) should no longer be mandatory. It ought to be possible to introduce the rule of individual representation by force of the statute (also in the case of management boards comprising several members). Maintaining the mandatory requirement of joint representation seems unreasonable, not only due to the diverse needs of cooperatives but also the fact that establishing a one-member management board is fully admissible. Further, a remodelling of the mixed joint

representation concept must be considered. *De lege ferenda*, an attorney-in-fact (acting jointly with a management board member under Article 54 of the Cooperative Law) should be replaced by a proxy. *De lege lata*, the mixed joint representation mechanism involves, above all, an attorney-in-fact and not a proxy. Nonetheless, the latter seems much more suitable for statutory representation purposes given the legal design, constant scope of empowerment and practical meaning of a (commercial) proxy. It is also regrettable that modern legislation does not explicitly authorise the supervisory board to represent the cooperative in court proceedings against management board members, an option that was provided for in the Act on Cooperatives (1920). As of today, granting such empowerment to the board would require some creative interpretation of the law. Future legal provisions should be expanded to also cover court (and out-of-court) proceedings involving the cooperative and its management board members.

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