

## ASSESSMENT OF THE ELECTORAL COMMITTEE'S SUBJECTIVITY IN TERMS OF LEGAL CAPACITY

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**Abstract.** It seems a truism to say that in a democratic state under the rule of law, it is the law that should be created in such a way that its addressees have not only the feeling, but the certainty that it is a transparent, clear and logical law. The rules for the creation of legislative authority in Poland are set out primarily in the Constitution and the Electoral Code. Also, those legitimized to exercise legislative power should be elected according to transparent rules, through fair elections, in accordance with the applicable principles of electoral law, including, first and foremost, the principle of free elections and the principle of equal electoral opportunities, as those underlying the establishment of electoral committees in the Polish legal system. Despite a number of tasks imposed on this entity by the legislator, both of a substantive and procedural nature, legal capacity has not been granted to this entity, which also gives rise to a number of legal consequences both in the course of the election campaign and after its completion.

**Keywords:** legal capacity of election committee; legal subject; legal personality; election committee.

### INTRODUCTION

The functioning of an episodic entity such as an electoral committee, to which the legislator has assigned a number of important tasks and competencies, forces one to consider its nature. In the Polish science of law for years there has been a discussion on the issues of subjectivity, capacity and legal personality [Wieczorkiewicz-Kita 2002, 76]. The discussion also includes considerations as to the types and categories of civil law subjects found in the

Polish legal system. Introduction on the grounds of the Civil Code in 2003<sup>1</sup> the third category of legal entities, namely, organizational units that are not legal persons, to which the legislator grants legal capacity, has not ended this debate, which has lasted for more than half a century. According to Z. Świdorski, “under Polish law there are no grounds for equating legal personality with legal capacity,” making the concept of *legal personality* broader than that of legal capacity [Sobolewski 2024; Kubiak-Cyrul 2024]. Moreover, A. Kidyba points out that personality, although it is a broader category than subjectivity, is not , “opposite to it” [Kidyba 2006, 152]. At the same time, this author proves, by juxtaposing the characteristics common to legal entities and the categories of entities defined in Article 33<sup>1</sup> of the Civil Code,<sup>2</sup> that the determinant of “participation in trade, including in the sphere of civil law relations,” is that these entities have legal capacity, legal capacity, judicial and procedural capacity [Kidyba 2006, 152]. In order to understand the essence of the legal position of the electoral committee, it is necessary to analyze the assessment of the legal subjectivity of the electoral committee in particular in terms of its legal capacity.

## 1. INTRODUCTORY REMARKS

Legal capacity, as an attribute of legal entities, both natural persons and legal entities, as well as entities referred to in Article 33<sup>1</sup> CC, is an institution of law that is unquestionable in its essence. It is commonly understood as the ability to be a subject of rights and obligations in the sphere of civil law [Grzybowski 1974, 357]. The concept of subjective right has been the subject of much controversy [Radwański 2004, 86; Benio 2014, 156; Pyziak-Szafnicka 2012, 792]. In A. Wolter’s terms, a subjective right is “one or more rights functionally related to each other and constituting an element of a given type of legal relationship” [Wolter 1972, 109]. Subjective right is defined by Z. Radwański as “a certain complex legal situation designated for subjects by the norms in force and protecting the legally recognized interests of these subjects” [Radwański 2004, 89; Idem and Olejniczak 2011, 89]. Considerations undertaken by A. Stelmachowski in determining the origin of laws and their subjects [Stelmachowski 1998, 242], seem to be irrelevant, as M. Benio also rightly argues [Benio 2014, 156], especially when taking into account the time limits of the existence of subjects of the right. For the granting of a right by the legislature will not be able to take place when the addressee of the right is not specified.

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<sup>1</sup> Act of 14 February 2003 amending the Civil Code and certain other acts, Journal of Laws of 2003, No. 49, item 408, Article 331.

<sup>2</sup> Act of 24 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 [hereinafter: CC].

After a linguistic interpretation of Article 1 CC, it should be stated that the provisions of the Civil Code regulate only civil law relations involving natural or legal persons. The consequence of this is the assumption that legal capacity is granted only to these subjects of law [Radwański 2003, 4]. Thus, here it is necessary to emphasize the lack of coherence between the provisions of Article 1 CC, and the content of Article 33<sup>1</sup> CC. The distinction of a new category of legal subjects became an expression of the legislator's application of the normative legal-technical method in the implementation of the demand formulated for years by the doctrine of law, and concerning the normalization of the category of subjects of civil law and the precise definition of subjects to which legal personality is granted. In the course of the economic development of the country, including in the previous legal-civil regime, in social and economic transactions appear, hitherto unknown to the legislator, and consequently also unnamed, unions or configurations of natural persons who carry out certain tasks and objectives, and who have not been granted legal personality. The qualification of such entities to any of the categories of legal entities, in view of the dichotomous division of such entities that has been established and functioning for years, has often caused significant problems for participants in socio-economic circulation, as well as courts and public administration bodies. Despite the heated discussion in this regard, which lasted for years<sup>3</sup> and resulted in a lack of consistency in the positions taken by the Supreme Court in this regard, the legislature ultimately adopted a solution to the extent of the consensus that could be reached. A third category of legal entities was established, defining them as, "organizational entities that are not legal persons, to which the law grants legal capacity."

The location of a subject of law within a strictly defined chronological framework is a prerequisite for it to realize the possibility of being a subject of rights and obligations under the law.

The legislator indicated, depending on the type of electoral committee, that the beginning of its existence, is the decision of the authorized body on the formation of an electoral committee or by a group of at least 15 citizens with the right of election, and then notification, with the fulfillment of the conditions specified in the Election Code, to the competent electoral body. The election committee shall be dissolved by operation of law in the cases specified in the provisions of Articles 100 and 101 of the Electoral Code,<sup>4</sup> after the expiration of 60 days from the date of acceptance of the election committee's financial report by the competent electoral body or ineffective expiration of the time limit for filing a complaint or appeal referred to in Article

<sup>3</sup> Advocates of the separation of the third category of legal subjects were A. Wolter, S. Sołtysiński, S. Szer, J. Ignatowicz, J. Szwaja, K. Stefaniuk, A. Szajkowski, A. Klein et al. In opposition to this concept stood Z. Radwański, S. Grzybowski and J. Skąpski.

<sup>4</sup> Act of 5 January 2011, the Electoral Code, Journal of Laws of 2025, item 365 [hereinafter: EC].

145(1) and (5) EC, or issuance of a ruling referred to in Article 145(2) or (5) EC, accepting the complaint or appeal against the decision of the competent electoral body to reject the report. An electoral committee that is entitled to a subjective subsidy (for each MP, senator and Member of the European Parliament seat obtained) referred to in Article 150 or Article 151 EC shall be dissolved by operation of law 6 months after the date of receipt of the subsidy. The next cut-off moment for the functioning of an electoral committee that has registered lists of candidates or a candidate is the day on which the court decision on the resolution of a protest against the validity of elections, the validity of elections in an electoral district or the validity of the election of a specific person becomes final. The legislator also allows the dissolution of an election committee before election day in accordance with the provisions on its formation. The dissolution of the committee shall be immediately notified to the electoral body that accepted the notice of formation of the committee, and if the dissolution of the committee occurred after the registration of a list of candidates or a candidate, also to the competent electoral commission. In turn, the electoral committee of voters is dissolved by law if the number of persons who formed the electoral committee is less than the minimum number required for the formation of a given electoral committee of voters, as specified in the Code (Article 101(3) EC). The legitimacy of introducing such a significant differentiation of electoral committees of voters with respect to other types of electoral committees is questionable. The Supreme Court, in its justification for the decision of November 10, 2011<sup>5</sup> stated that, “the dissolution of a committee and the cancellation of its registration can only apply to a committee that exists within the meaning of the Election Code,”<sup>6</sup> not, as the complainant in the case in question argued, at the stage of forming an electoral committee. This order was glossed by A. Rakowska, drawing attention to the many inaccuracies it contains [Rakowska 2012, 99-108]. The glossator rightly raised the necessity of re-interpreting the linguistic interpretation, the result of which is the statement, that the legislator, by using the verb *formed* in the provision of Article 101(3) EC, refers to the legal and factual state on the date of registration of the electoral committee [ibid., 106]. Here she also cites the position of the State Electoral Commission (PKW) expressed, although with regard to the referendum group in the local referendum, but which can be adequately applied to election committees as well. According to it, “it is possible to complete the composition of the initiative group until the submission of the referendum application,” while at the same time “withdrawal from the initiative group after the submission of such an application has no legal significance” [ibid.]. It is impossible not to agree with A. Rakowska that the adoption

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<sup>5</sup> Ref. no. III SW 102/11, Lex no. 1647050.

<sup>6</sup> Ibid.

of the position expressed by the Supreme Court, rather than the application of a literal interpretation, could lead to behavior of an unlawful nature aimed at disqualifying another participant in the electoral competition, and consisting in solicitation of a statement of intent by a member of the electoral committee of voters to withdraw from the group [ibid., 107]. Adoption of the Supreme Court's proposed understanding of the wording of the provision of Article 101(3) EC would consequently lead to the statement that, according to Article 101(2) EC, once the competent electoral body has accepted the notification on the formation of a coalition electoral committee, changes in the composition of the electoral coalition are impermissible [Rakowska 2012, 107]. In addition, according to A. Rakowska, a unilateral statement by a participant in an electoral coalition to withdraw from the electoral coalition would not give rise to legal consequences and would not violate the principle of equal electoral opportunities vis-à-vis electoral committees of voters [ibid.]. Hence, it should be postulated to consider the legitimacy of applying the basic one of the interpretative principles, i.e. the linguistic interpretation with regard to the content of Article 101(3) EC, and even, in the event of further interpretative problems, with a view to observing the principle of equal electoral opportunities, the introduction by the legislator of the proviso used in para. 2, namely, that "a unilateral statement of a member of an electoral committee on withdrawal from it together with the registration of the electoral committee of voters by the competent authority does not give rise to legal effects."

## 2. RECORD-KEEPING DUTIES OF THE ELECTION COMMITTEE

One of the obligations imposed by the legislator on the electoral committee, is to have a Tax Identification Number (NIP), as well as an entry in the National Official Register of National Economic Entities REGON, kept by the President of the Central Statistical Office. At the request of the electoral committee, the relevant authorities are required to issue a confirmation of the assignment of the NIP number and a decision on the assignment of the REGON number, no later than the end of the second working day following the day of submission of the application for the number. This obligation is not constitutive, that is, it does not condition the formation of the committee itself, and then the validity of the actions taken by the electoral committee in the course of the electoral process. It should be assumed, following J. Szymanek, that in the current state of the law, the assignment of a NIP and REGON number is an activity that concludes the "procedure of its formation" [Szymanek 2011, 107]. According to the wording of Article 2(1) and (2) of the Act of October 13, 1995 on the principles

of registration and identification of taxpayers and payers<sup>7</sup> natural persons, legal entities and organizational units without legal personality, which are taxpayers under separate laws, are subject to registration obligation. Other entities are also subject to this obligation if they are taxpayers under separate laws, as well as tax payers. Undoubtedly, the fact of conducting any elements of business activity results in the need to fulfill the registration obligation in the state tax system. Mere participation in civil law transactions is not a prerequisite for the fulfillment of this obligation to the same extent by all legal entities, since individuals may also use the PESEL number. The lack of a strictly defined circle of entities to which the status arising from Article 331 CC would be attributed, also often results, as aptly argued by B. Rogalska, in requests to the tax authorities to specify by them, using the exclusion method, specific types of entities that, in the opinion of the authority, meet the conditions outlined by the legislator in the context of the wording of Article 331 CC [Rogalska 2014]. Therefore, it is necessary to agree with the cited author that the categorization of entities according to the rules arising from the civil law does not have a direct impact and meaning on the tax registration system conducted in Poland [ibid.], because regardless of the classification of the legal entity, each of them will be subject to the tax registration obligation. Although the legislator has set a 7-day deadline for entities subject to registration and identification obligations under the provisions of the Law on the Principles of Registration and Identification of Taxpayers and Payers (Article 9(1)) to make an identification notification (update notification), the legislator has not indicated in the provisions of this normative act the sanctions for failure to fulfill this statutory obligation.

Another registration obligation incumbent on election committees is to report to the National Official Register of National Economic Entities (REGON). This register covers legal entities, unincorporated organizational units, natural persons conducting business, and their local units. It is maintained by the President of the Central Statistical Office in a computerized manner, in accordance with the disposition of Article 42(1) of the Act of June 29, 1995 on Public Statistics<sup>1</sup> and para. 1 of the Decree of the Council of Ministers of July 27, 1999.<sup>8</sup> An application for entry in the register of entities shall be submitted to the statistical office of the province competent for the entity's headquarters or place of residence, within 14 days from the occurrence of circumstances justifying the entry, and an application for a change in the characteristics covered by the entry and an application for deletion – within 7 days from the occurrence of circumstances justifying

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<sup>7</sup> Journal of Laws of 2025, item 237 as amended.

<sup>8</sup> Regulation of the Council of Ministers of 30 November 2015 on the manner and methodology of maintaining and updating the national official register of national economy entities, application forms, questionnaires and certificates, Journal of Laws item 2009 as amended.

the change or deletion. The application shall be accompanied by documents specified by the provisions of other laws, confirming the establishment of the entity or the commencement of its activity, a change in the characteristics covered by the entry or the deletion of the entity (Article 42(6) of the Act on Public Statistics). The REGON register is a continuously updated collection of information on national economy entities maintained in an IT system in the form of a central database, the purpose of which is primarily to ensure a uniform identification and classification policy for these entities.<sup>9</sup> Thus, the legislator has strictly defined not only the timeframe for fulfilling the obligation to report the entity, but also to make changes regarding the entity, including its deletion from the register. Moreover, in Chapter 8 of the Law on Public Statistics, sanctions have been specified by the legislator for refusing to perform the statistical obligation (Article 57) and for submitting statistical data after the specified deadline (Article 58), consisting in imposing a fine on entities that fail to fulfill their obligations in this regard.

The record-keeping duties discussed will, in practice, apply to the electoral committee of voters. Since the function of electoral committees of political parties, coalition electoral committees of political parties, and electoral committees of organizations is performed by their bodies authorized to represent these entities externally, and all of them function in specific registers, or, as in the case of ordinary associations, the circumstance of their formation is reported to the competent supervisory authority [Czaplicki 2014],<sup>10</sup> it is not uncommon from this fact to draw a conclusion about the qualification of the entities forming the electoral committee to a certain category of legal entities and, at the same time, also to be in possession of entries in the records in question. In one of the explanations, the PKW indicated that “the electoral committee of a political party may use the NIP and REGON numbers of the political party that established the committee.”<sup>11</sup> It seems that, *per analogiam*, this possibility also applies to social organizations that appear in the applicable registers. Therefore, the potential circle of election committees applying for a NIP and REGON number may actually include only electoral committees of voters. This type of electoral

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<sup>9</sup> See <http://bip.stat.gov.pl/dzialalnosc-statystyki-publicznej/rejestr-regon/informacje-ogolne/> [accessed: 01.06.2025].

<sup>10</sup> From the fact of the obligation to indicate in the notification on the formation of an electoral committee an organisation, which is possible only in municipal elections, rightly K.W. Czaplicki deduces that such “election committees may be formed by all associations and social organisations entered in the relevant registers.”

<sup>11</sup> Explanations of the State Electoral Commission of 5 August 2011, ZKF-503-2/11. These explanations appear to be still valid despite the failure to include this information even in the body of the most recent PKW document issued on 20 July 2015 entitled Explanations concerning the rules for financing election campaigns in the elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland, scheduled for 25 October 2015, ZKF-503-2/15.



committees, from the beginning of their functioning in the electoral process, has been the most frequently chosen formula for joining electoral competition. Thus, it is incumbent on election attorneys to both report and update, and then apply for deletion from the type of records in question. Despite the sanctions specified to some extent by the legislator for failure to comply with obligations of a registration and record-keeping nature, the entities obliged to implement it in the per-election and election process, in most cases do not implement it within the statutory deadline. This state of affairs is influenced, in our opinion, not only by the level of legal awareness of election committee plenipotentiaries, but also by the failure of registration authorities to draw consequences to a degree that is considered severe. The introduction of significant conveniences in the form of the possibility to submit an electronic document bearing a secure electronic signature verified by a valid qualified certificate or a trusted profile on the ePUAP platform should be evaluated positively. The concept of using the already discussed election platform, correlated also with the administrative bodies to which the obligations imposed by the legislator should be fulfilled, still seems worth considering. Direct transmission of the required authenticated data by the electoral committee's plenipotentiaries, the possibility of their modification, and then also the possibility of deleting, de-registering the electoral committee from these records would certainly contribute to increasing the degree of implementation of this statutory obligation. Obligation to keep accounts under the rules set forth in the Law of September 29, 1994 on accounting<sup>12</sup> for non-business entities (Article 128 EC), the obligation to collect funds of the election committee only in one bank account (Article 134(1) EC), as well as the powers arising from normative acts concerning these records,<sup>13</sup> are the starting point for the bank with which the election committee is to conclude a bank account agreement. On the other hand, given the episodic nature of an entity such as an electoral committee, it is worth considering the legitimacy of even such a rigorous registration, especially in the REGON register, of the least numerous in terms of the number of members, of electoral committees of voters in local elections. In our opinion, defining strictly the types of electoral committees, specifying the minimum number of their members,<sup>14</sup> while indicating the maximum amount of receipts of the committee's funds, which would be exempted from reporting to the REGON register, would in no way affect the implementation of tasks under the Law on Public Statistics. Data on these smallest election committees

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<sup>12</sup> Journal of Laws of 2023, item 120 as amended.

<sup>13</sup> Article 11(2)(4) of the Act of 13 October 1995 on the rules for recording and identifying taxpayers and payers.

<sup>14</sup> Taking into account the current legislation on the formation of electoral committees – note by authors.



could be provided by the relevant election authorities. In this way, the fiction of full implementation of the obligations related to the deletion of these small election committees from the REGON register would be eliminated.

### 3. LEGAL CAPACITY AS AN ATTRIBUTE OF A LEGAL ENTITY VS. CHARACTERISTICS OF AN ELECTION COMMITTEE

Possession of legal capacity is an attribute that allows the basic assignment of a given entity to a certain category of legal entities functioning in the Polish legal system. The first of the normative methods is the formulation of a group of characteristics by the legislator, which should be possessed by a legal entity pretending to be a legal person [Radwański 2003, 4]. The normative method of regulation adopted in the Polish science of civil law, the overriding feature of which is the indication and granting of legal personality explicitly by the legislator, leads to the conclusion that neither legal personality nor legal capacity has been granted explicitly to election committees in the provisions of the Electoral Code [Czakowska and Rażny 2011, 80]. The legislator established in Article 84 EC the exclusive right to take all actions in the electoral process to legal entities such as election committees. The nature of electoral activities can be described as organizational, financial and agitation [Czaplicki 2014]. The scope of these tasks is so broad that it allows, at the very least, to assume that an election committee may have the characteristics of an organizational unit from Article 331 CC [Pazdan 2013, 139; Czakowska and Rażny 2011, 81]<sup>15</sup>. The intention of the legislator, through the establishment of this category of entities, was certainly to create a kind of alternative for all those legal entities which, for various reasons, do not have the legal capacity directly granted by the legislator, but to whom this capacity has, as it were, been granted through a number of rights and obligations imposed on them by way of normative acts [Pazdan 2013, 145]. This solution is quite justified in the face of evolving socio-economic relations and various configurations of entities appearing in circulation, which become parties to civil law relations. An enumerative enumeration of them, therefore, was and still is not possible today. On the other hand, such a solution encounters in the practice of economic turnover difficulties of interpretation by its participants themselves, electoral bodies, public administration bodies and judiciary. An organisational unit always

<sup>15</sup> In civil law doctrine, there are several terms for these entities: 'defective legal person', by A. Wolter, 'incomplete legal person' – T. Sokołowski, 'statutory person' – J. Frąckowiak, 'entities without legal personality' – M. Pazdan, 'statutory entities' – A. Kidyba, 'non-personal legal entities' – A. Szajkowski, Z. Radwański – 'incomplete legal persons'. In the absence of a uniform nomenclature in this area, we will use the term organisational unit from Article 331 CC.

serves as a point of reference for legal regulation, and its indispensable element is “the attribution [...] of the effects of the behaviour of certain individuals” [Frąckowiak 2012, 1134]. The necessary conditions for an organisational unit to function are the fact that it has its own organisational structure, conducts specific activities and has at its disposal appropriate financial means (assets) necessary to conduct these activities, the existence of a specific composition and specific representation. From the perspective of an electoral committee, these conditions are predominantly fulfilled. This is because an election committee is always formed by an entity indicated by the legislator. Thus a category of entity appears, namely the founder, who may be a natural or legal person. The activity of election committees is strictly defined by the legislator, and the entity is obliged to conduct financial management respecting the principle of openness. The main task assigned to the committee, which is the exclusive conduct of the election campaign, is predominantly associated with the supervision of a strictly defined, transparent financial management. In this respect, the legal structure of the electoral committee is similar to the legal forms of ordinary associations and civil partnerships. An ordinary (non-registered) association is a simplified form of association without legal personality.<sup>16</sup> Therefore, it should be assumed that all the features attributed to a registered association, i.e. the voluntariness of its association, its permanence, self-governance and the non-profit nature of the work of its members, also belong to an ordinary association. However, the issue of the legal capacity of a non-registered association, with all the specifics and normative context of its functioning, seems to be at least a debatable issue. Z. Radwański classified this type of association in the category of organisational units from Article 33<sup>1</sup> CC, arguing that it has legal capacity [Radwański 2003, 7]. He derived it from the basic features of an organisational unit that an ordinary association would have, such as the organisational structure reflected in the bylaws, which also define the name, purpose, area, means of operation, seat, and representative of the association [ibid.]. The *quasi-assets* of an ordinary association were defined by Z. Radwański as contributions from its members [ibid.]. However, in our opinion this view is too far-reaching. For it remains in contradiction with the normative method of regulating legal personality (also subjectivity), which, by the way, Z. Radwański was an advocate of. One has to agree with J. Frąckowiak that it is not so much difficult [Frąckowiak 2012, 1211],<sup>17</sup> but it is simply impossible in the current legal state to adopt a different conception of the regulation of this issue than the one strictly resulting from

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<sup>16</sup> Articles 40-43 of the Act of 7 April 1989 on Associations (Journal of Laws of 2020, item 2261 as amended).

<sup>17</sup> J. Frąckowiak thereby refusing to confer on the ordinary association the attribute of a ‘legal entity’.

the wording of Articles 33 and 33<sup>1</sup> CC. Irrespective of the legal category, an election committee is obliged to appoint its own election agent and financial representative. The fact that the legislator has not explicitly granted legal capacity nevertheless makes it possible for the committee to function precisely through its plenipotentiaries. A specific deviation from the permanent omission by the legislator of the provision on the legal capacity of an election committee is the right granted to election committees of organisations and election committees of voters to take out bank loans only for the purposes related to the elections (Article 123(3) EC). This is certainly not a deliberate action of the legislator aimed at aggravating the emerging doubts regarding the subjectivity of the election committee, but a consequence of guaranteeing the implementation of equal electoral opportunities [Czakowska and Rażny 2011, 80-81]. The legislator, taking into account the temporary nature of the electoral committee, as well as the necessity to guarantee the certainty of economic turnover with the participation of these subjects of law, established a certain general principle. It consists in holding the financial proxies responsible for the property obligations of the election committee (Article 130(1) EC). This rule is supplemented by the establishment of the liability of other entities participating in the electoral process in the event that the assets of the financial representative cannot cover the claims against the electoral committee. In such a case, the liability for the property obligations of the electoral committee of a political party or organisation is borne by the political party or organisation that formed the electoral committee. In the case of an electoral committee formed by an ordinary association, the liability is borne jointly and severally by the members of the association. And with regard to the electoral committee – jointly and severally by the persons who are members of the committee (Article 130(3) of the Code of Criminal Procedure). The joint and several liability of the members of the electoral committee is applied only in a case strictly specified by the legislator. The problem of responsibility for the property obligations of the electoral committee was the subject of a lively discussion during the legislative work on the draft Electoral Code. One of the amendments to this draft proposed to establish and sanction the principles of liability in a manner much more far-reaching in its consequences than the one in force today. Property obligations were to have the character of non-transferable, and legal actions aimed at the disposal of such obligations would be null and void.<sup>18</sup> The wording of the property liability provision was also intended to include the proviso that “where a third party has made a monetary contribution which the creditor cannot refuse to accept, the members

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<sup>18</sup> The proposal made by the adviser to the head of the Prime Minister's Office, M. Marquez-Vasque, see [https://orka.sejm.gov.pl/Biuletyn.nsf/0/AD87D312CF24A9D5C1257642004C8FDC/\\$file/0267806.pdf](https://orka.sejm.gov.pl/Biuletyn.nsf/0/AD87D312CF24A9D5C1257642004C8FDC/$file/0267806.pdf) [accessed: 04.07.2025], p.4.

of the election committee shall be deemed to be unjustly enriched.”<sup>19</sup> The justification for the provision formulated in this way was “to prevent the disposal of financial obligations to third parties, in particular to carry out acts such as assumption of debt or exemption from debt.”<sup>20</sup> The structure is then similar to that of a civil partnership, the essence of which consists in the cooperation of partners in order to implement a common economic intention (Article 860 CC). The overriding aim of the election committee is to conduct an election campaign, which, in principle, cannot take place without any financial resources at its disposal. The legislator prescribes that the financial management of the election committee be carried out on the basis of the applicable accounting principles, including in particular the accumulation of financial resources in a separate bank account. The conduct of the election campaign, culminating in electoral success, is the main task and objective of all members of the election committee. Subsidiary liability of its members is a kind of equivalent of joint and several liability of partners in a civil partnership (Article 864 CC). However, a civil partnership is no longer denied not only legal personality, but also legal capacity [Radwański 2003, 7; Idem and Olejniczak 2011, 199; Gniewek 2014, 85]. Thus, a civil partnership does not belong to the category of entities referred to in Article 331 CC. One has to agree with K.W. Czaplicki that the type of liability adopted is of an extremely restrictive nature.<sup>21</sup> Only the scope of responsibility adopted in such a way, in view of the not directly regulated legal status of the election committee, can significantly contribute to increasing the openness and transparency of the financial aspect of the conducted election campaigns.

The issue of the protection of personal rights is an extremely important element related to the participation of all types of entities in the electoral process – from candidates, through members of electoral committees, electoral committees, voters, to electoral bodies. The legislator has not granted the electoral committee the legal capacity to protect its personal rights either. It is argued in the doctrine of law that personal goods belong to every subject of the law, taking into account its specificity [Brzozowski, Kocot, and Skowrońska-Bocian 2010, 125ff; Nazaruk 2014]. It follows from the wording of Article 94 EC that only the name and abbreviation of the name and the graphic symbol of the electoral committee are protected. This protection is granted from the moment the committee is established. As emphasised by K.W. Czaplicki “this protection does not belong to the competence of the electoral bodies, because electoral committees enjoy, on general principles [...], the legal protection provided for personal property (Articles

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> See [https://orka.sejm.gov.pl/Biuletyn.nsf/0/EDB75576F1C516E5C12576FF00302BF2/\\$file/0358606.pdf](https://orka.sejm.gov.pl/Biuletyn.nsf/0/EDB75576F1C516E5C12576FF00302BF2/$file/0358606.pdf) [accessed: 04.07.2025], p. 10.

23, 24 and 43 CC)" [Czaplicki 2014]. Thus, the legislator has clearly indicated that the protection of the personal rights of the election committee itself has a very limited scope. At the same time, the electoral committee has not been given any powers related to the taking of legal action in this protection by the committee itself. Therefore, it should be concluded that the electoral committee was not granted legal capacity in this case either. Legal capacity, as an attribute of legal existence, is not gradable. However, on the basis of the provisions of the Electoral Code, such a conclusion can be drawn. This is because the legislator grants certain powers and duties, the implementation of which by the electoral committee makes it possible for it to be treated as an entity with quasi-legal capacity. However, this thesis should be firmly rejected, as it is not reflected in the Polish legal system [Żukowski 2004, 105].<sup>22</sup> The lack of legal capacity of an electoral committee, with numerous obligations imposed on it in the course of the electoral process, in practice results in problems in interpreting their legal status, both in the sphere of civil and legal transactions and in court proceedings. The time space within which the electoral committee operates is predominantly limited by the framework of the electoral calendar. The legislator therefore creates a fiction in terms of the electoral committee's real impact, as it generally ceases to exist shortly after the voting takes place. This is also the purpose for which it was established, to conduct the election campaign. However, the effects of the legal relations established in the course of the electoral process, can also occur outside this timeframe.

## CONCLUSIONS

The ambiguity of the legal status of the electoral committee raises a number of doubts both in the practice of law (from the point of view of the participants in the electoral process), the judiciary and the doctrine. From the concept of normative creation of legal entities adopted in the Polish legal system, as long as it is respected, it follows unequivocally that only those entities which have been directly granted legal personality by the legislator are legal persons. Similarly, with regard to the so-called incapacitated legal persons, whose status depends on the legal capacity granted by the legislator. The catalogue of competences and tasks belonging to the exclusive competence of election committees is quite broad and, in our opinion, allows one to assume that the election committee has, in fact, a quasi-legal capacity that is incomplete. In view of the impossibility of gradation of legal capacity,

<sup>22</sup> A. Żukowski also points to the "limited legal capacity to act" of the electoral committees.

The thesis on the limited legal capacity of electoral committees is part of the justification of judgment of the Provincial Administrative Court in Szczecin of 22 September 2010 (ref. no. II SA/Sz 318/10), decision of the District Court in Toruń of 31 October 2013 (ref. no. I Ns 248/13).

it is necessary - in our opinion – to give the electoral committees legal capacity with regard to the electoral activities they perform. The electoral process, and in particular one of its stages, i.e. the electoral campaign, requires from the entities conducting it exclusively, i.e. the election committees, increased activity in the social and economic sphere.

The use of *substitutes* for generally accepted legal solutions sometimes leads to over-interpretation of the binding regulations, to interpretations going beyond what is permissible, which in effect leads to legal confusion, particularly for interested litigants. It seems to be a truism to state that in a democratic state under the rule of law, the law should be created in such a way that its addressees have not only a feeling, but certainty, that it is a transparent, clear and logical law. The principles for the creation of legislative authority in Poland are set out primarily in the Constitution and the Electoral Code. Also those legitimised to exercise legislative authority should be elected according to transparent rules, by way of fairly conducted elections, in compliance with the applicable principles of the electoral law, including, above all, the principle of free elections and the principle of equal electoral opportunities, as those underlying the establishment of electoral committees in the Polish legal system.

In view of the above, it seems necessary to reflect again on the legal capacity granted by the legislator to the electoral committee. It could be a form of peculiar qualification to 'be an independent subject of rights and obligations' [Radwański and Olejniczak 2011, 199] to the extent necessary to undertake, on an equal footing with other subjects of law, legal actions in the course of the electoral process. The duration of the legal capacity would be determined by the will of the election committee to participate in subsequent campaigns related to the next elections. In the situation of pending proceedings involving the election committee (civil, administrative, enforcement), the legal capacity would continue and there would be no possibility to dissolve the election committee.

In other cases, on the other hand, the electoral committee could be dissolved by application at any time after the electoral process by the body that registered it.

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