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Articles

Studia Iuridica Lublinensia vol. 34, 1, 2025
DOI: 10.17951/sil.2025.34.1.175-193

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Identity of a Juridical Person

Tożsamość osoby prawnej

ABSTRACT

The article is of a scientific and research nature and contains the results of research conducted in the areas of Polish civil and commercial law. The subject of the research was whether a juridical person is entitled to the personal interest in the form of identity and the right to identity. The aim was also to define the features and characteristics that determine the identity of a juridical person. Undertaking to analyse the issue is not only of theoretical importance but also of practical importance due to the problem of infringement of the right to identity of a juridical person. In the sphere of private law, identity as a personal right can be understood in two ways. A distinction should be made between an internal sense of identity, which is expressed in an awareness of uniqueness and distinctiveness, and an external sense of identity, which is a set of characteristics that allows a particular entity to be individualised and identified. The main thesis boils down to the assertion that a juridical person is entitled to identity as a personal interest and the right to identity. The identity of a juridical person means its sameness and can only be approached in the external aspect. Identity thus understood needs to be distinguished from other personal interests of the legal person, such as in particular its goodwill, image or privacy. The assessment of the significance and classification of the elements of the structure of a juridical person allowing its identity to be determined makes it possible to distinguish among them distinctive signs, identification markings, structural and organisational factors.

Keywords: identity; juridical person; personal interests

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INTRODUCTION

The essence of the juridical person is expressed in the fact that it is an organisational unit on which the law confers legal personality (Article 33 CC[1]). The basic element of its legal construct is the organisational unit. This concept is a category of the law on persons and the basis for the construction of a legal entity that is not a natural person.[2] It can be considered as a separate, unified whole, consisting of a certain group of people with a determined structure and working together to achieve common goals, based on accepted rules and in an orderly manner.

In Polish, the term "identity" (*tożsamość*) means firstly "self-awareness" and secondly "facts, features, personal data to identify a person".[3] In the sphere of private law, it is recognised under Article 24 CC as a personal interest of a natural person.[4] An interesting question that needs to be examined seems to be whether a juridical person may have such identity and a right to identity and how it should be understood. Consequently, also a question arises about the determination and assessment of such elements of the construct of juridical person which could determine granting an identity to it. In this context, it is important to distinguish between identity in internal and external terms. Analysing these issues requires the use of the legal dogmatic method. The issue of personal interests of juridical persons is widely analysed by scholars in the field, but the issue of the identity of juridical person was not the subject of a separate publication.

THE CONCEPT OF IDENTITY OF JURIDICAL PERSON AS COMPARED WITH OTHER PERSONAL INTERESTS OF THE JURIDICAL PERSON

Identity as a personal interest can be defined as the sameness of an individual. It seems that it should be analysed in two aspects: internal and external. In the internal aspect, it means a sense of identity expressed in the awareness of one's uniqueness and distinctiveness.[5] The external aspect, on the other hand, denotes the set of traits

[1] Act of 23 April 1964 – Civil Code (consolidated text, Journals of Law 2022, item 1360, as amended).

[2] J. Frąckowiak, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Warszawa 2012, p. 1020.

[3] W. Doroszewski (ed.), *Słownik języka polskiego*, https://sjp.pwn.pl/slowniki (access: 26.3.2025).

[4] J. Buchalska, [in:] *Dobra osobiste i ich ochrona*, ed. M. Romańska, Warszawa 2020, p. 127 ff.

[5] P. Sobolewski, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, eds. K. Osajda, W. Borysiak, Legalis 2023.

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and qualities determining the sameness of a human being,[6] allowing their individualisation and identification. It is determined by objective circumstances. The identity of the natural person is determined primarily by the name, nickname, image, marital status (family identity), national identity or psychical and physical identity (gender).[7]

The fact that also juridical persons are entitled to personal interests is determined by Article 43 CC, which provides for the application of the provisions on the protection of personal interests of natural persons *mutatis mutandis* to juridical persons. To put it in some simplification, this regulation provides that juridical persons are entitled to personal interests that are subject to legal protection.[8] They are characterised by the fact that they are closely related to the legal person as a subject of law, they constitute the object of rights of an absolute nature, while classifying their catalogue should take into account the specificity of the juridical person. They are defined as non-property values which enable the juridical person to function in accordance with its scope of activities.[9]

Referring to the concept of identity formed in relation to natural persons, it can be assumed that the identity of a juridical person means its sameness. Externally, it means the set of traits that determine its distinctiveness and uniqueness. Consequently, it would be a personal interest in the form of the *status quo* of the juridical person's perceptions,[10] which determine its sameness. By contrast, it is questionable whether a sense of identity can be attributed to a juridical person as an awareness of distinctiveness and uniqueness, which arises from its specificity as a legal entity.

The attempt to designate the determinants defining the identity of a juridical person raises the question of the possibility of applying the construction of personal data to the juridical person, which entails the issue of the exercise of the right to personal data by it. These data are understood aa personal interest covering all information enabling the identification of a natural person.[11] Although the protection of personal data has been limited to natural persons[12] and is intended to ensure privacy of such persons, the scholarly opinion points out the need to extend it also to juridical persons. It is specifically pointed to the possibility of granting the juridical person the right to

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[6] L. Garlicki, [in:] L. Garlicki, P. Hofmański, A. Wróbel, *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, vol. 1: *Komentarz do artykułów 1–18*, Warszawa 2010, p. 493.

[7] See J. Buchalska, *op. cit.*, p. 127 ff.; L. Garlicki, *op. cit.*, p. 493.

[8] As in J. Koczanowski, *Ochrona dóbr osobistych osób prawnych*, Kraków 1999, p. 31; A. Kubiak-Cyrul, *Dobra osobiste osób prawnych*, Kraków 2005, p. 116. Differently M. Kępiński, [in:] *Prawo handlowe*, eds. A. Koch, J. Napierała, Kraków 2002, p. 72.

[9] Judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNCP 1988, no. 2–3, item 40.

[10] J. Koczanowski (*op. cit.*, p. 146) defines the right to identity of a juridical person as a right to a kind of image of that person, in a different sense from that of natural persons.

[11] A. Kubiak-Cyrul, *Dobra…*, p. 210.

[12] Act of 10 May 2018 on the protection of personal data (consolidated text, Journals of Law 2019, item 1781, as amended).

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dispose of its "personal" data. As a result, the juridical person could enjoy protection in the event of incorrect processing of data relating to that person.[13]

It seems that the concept of personal data is very useful when trying to construct the identity of juridical person, since it can be considered that the traits that make up its identity are precisely those which enable the juridical person to be identified. They constitute specific "personal data" of a juridical person. Their entirety makes up its sameness. These traits may be governed by both private law and public law regulations. Their main catalogue may be determined by reference to the elements constituting the concept of juridical person as an organisational unit.

In that regard, a juridical person may be granted an identity right having the character of a personal right. Its infringement may take the form of the use of data creating the identity and identifying the specific juridical person by another entity. This may involve the use of distinguishing or identifying signs of the juridical person, but also in arrogating the activities of such a juridical person or of its assets or undertaking. However, an infringement of the right to identity cannot be equated with an infringement of individual personal or property rights of a juridical person. It takes the form of "impersonating" a particular juridical person, which is expressed in arrogating various characteristics that make up the uniqueness of the juridical person concerned. The behaviour described as "identity theft" occurs if someone illegally acquires someone else's personal data and uses it against the will of the authorised person.[14] This issue appears to be relevant not only for natural persons but also for juridical persons.

There is also a question of how to classify identity as a personal interest against the background of other personal interests of a legal person, such as goodwill, image or privacy.

Goodwill is a kind of equivalent of dignity of a natural person.[15] This interest is also referred to as good name,[16] reputation,[17] brand or established position,[18] as well

[13] A. Kubiak-Cyrul, *Dobra…*, pp. 201–211. See also J. Barta, P. Fajgielski, R. Markiewicz, *Ochrona danych osobowych. Komentarz*, Kraków 2007, pp. 199–204.

[14] For the protection of natural persons against such action, Article 190a § 2 CC is applicable, pursuant to which whoever, by impersonating another person, uses their image, other personal data or other data by which he or she is publicly identified, thereby causing a material or personal harm to them, shall be subject to a penalty.

[15] J. Buchalska (*op. cit.*, pp. 203–204) points out that a juridical person is entitled to the so-called right to panorama.

[16] M. Dziurda, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, ed. J. Gudowski, vol. 1, Warszawa 2021; P. Księżak, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz. Część ogólna*, eds. P. Księżak, M. Pyziak-Szafnicka, LEX/el. 2014.

[17] P. Sobolewski, *Komentarz do art. 43…*

[18] Judgment of the Court of Appeal in Warsaw of 10 April 2019, I ACa 17/18, Legalis; judgment of the Court of Appeal in Warsaw of 24 October 2019, V ACa 17/19, Legalis.

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as recognition or authority.[19] It is difficult to talk about dignity or internal honour in the case of juridical persons. However, the external part, i.e. the good name, is protected. It is defined as other people's good opinion about the legal entity in question, mainly due to its activities,[20] and as the right of a juridical person to be respected for its actual position and the value it holds in the community.[21] Goodwill is regarded as one of the fundamental assets of a juridical person. Its breach most often takes the form of statements attributing to the legal person wrongdoing that may expose it to the loss of confidence necessary for its proper functioning.[22]

To some extent, personal interest in the form of image is linked to a good name (reputation). The prevailing scholarly view is to question whether a juridical person is entitled to such personal interest.[23] In the case of a natural person, the image is understood as the physical characteristics of a human being that allow him/her to be individualised and identified, creating a sense of identity and uniqueness, defining the "personality" of the individual.[24] Therefore, it is difficult to identify the elements that could make up the image of a juridical person. It is thus assumed that it is not the image of its office building, members of its governing bodies and of the whole set of its elements.[25] At the same time, a view is expressed that the carrier of the identity of a juridical person in its external reception is its symbol, which, like the name or business name, is a personal interest of the juridical person and in this sense is its image.[26] However, such an approach seems to equate the image with a sign individ-

[19] G. Gorczyński, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, eds. M. Fras, M. Habdas, Warszawa 2018.

[20] J. Buchalska, *op. cit.*, p. 203; A. Kubiak-Cyrul, *Dobra…*, p. 167.

[21] J. Koczanowski, *op. cit.*, p. 139; K. Świątczak, *Dobra osobiste osób prawnych w polskim prawie cywilnym*, Łódź 2020, p. 43.

[22] See judgment of the District Court in Warsaw of 13 July 2022, XXII GW 70/23, Legalis.

[23] R. Szczepaniak, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, ed. M. Gutowski, vol. 1, Warszawa 2021; M. Dziurda, *Komentarz do art. 43…*; P. Księżak, *Komentarz do art. 43…*; M. Pazdan, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, ed. K. Pietrzykowski, vol. 1, Warszawa 2020; J. Balcarczyk, *Prawo do wizerunku i jego komercjalizacja. Studium cywilnoprawne*, Warszawa 2009, p. 92; P. Ślęzak, *Ochrona prawa do wizerunku*, Katowice 2009, p. 25; A. Matlak, *Cywilnoprawna ochrona wizerunku*, "Kwartalnik Prawa Prywatnego" 2004, no. 2, p. 324. See also judgment of the Supreme Court of 5 April 2013, III CSK 198/12, OSNC 2013, no. 12, item 141; judgment of the Supreme Court of 12 December 2017, IV CSK 131/17, LEX no. 2439124; judgment of the Court of Appeal in Krakow of 5 December 2012, I ACa 1224/12, Legalis; judgment of the Court of Appeal in Warsaw of 20 October 2014, I ACa 456/14, Legalis; judgment of the Court of Appeal in Warsaw of 29 March 2017, I ACa 138/16, LEX no. 2394843; judgment of the Court of Appeal in Warsaw of 1 August 2019, V ACa 501/18, Legalis.

[24] J. Balcarczyk, *op. cit.*, pp. 21–30.

[25] Judgment of the Supreme Court of 25 May 1977, I CR 159/77, Legalis; R. Szczepaniak, *op. cit*.

[26] Judgment of the Supreme Court of 7 March 2003, I CKN 1000/01, Legalis; P. Sobolewski, *Komentarz do art. 43…*; judgment of the Court of Appeal in Poznan of 7 November 2012, I ACa 769/12, LEX no. 1237451; judgment of the Court of Appeal in Bialystok of 22 January 2014, I ACa 666/13, LEX no. 14253702014; judgment of the Court of Appeal in Katowice of 13 February 2014, I ACa 1086/13,

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ualizing the juridical person in legal transactions. The "image" of a juridical person should rather be understood as a way it is perceived by the environment, and thus the picture of that juridical person in the eyes of third parties.[27] This is the sense in which the concept of image seems to be used in Article 2 (2) of the Act on providing services by electronic means,[28] understanding commercial information as information intended directly or indirectly to promote the goods, services or image of the trader. In view of this provision, it would be difficult to consider that it only applies to a trader who is a natural person. Image in this sense has an important link with the understanding of the goodwill of a juridical person.[29] The fundamental difference would have to be seen in the way the juridical person is perceived in both cases. Indeed, while goodwill presupposes value-laden judgments and refers to positive perceptions of the legal entity, its image should be viewed objectively, as encompassing the perception of the juridical entity in question, irrespective of the assessment of its activities. As a result, it would also cover such perceptions that can be described as "notoriety" (bad name).[30]

Privacy is also one of the personal interests[31] to which the juridical person is entitled, which stirs much controversy.[32] As regards individuals, it is understood as "being let alone",[33] the individual's seclusion from the general public, an area of inaccessibility,[34] a sphere free from external interference, the autonomy of the individual.[35] It may be argued that, with regard to juridical persons, it is also justified to guarantee the protection of the internal autonomy of the individual against external

LEX no. 1347961; judgment of the Court of Appeal in Krakow of 25 February 2015, I ACa 1714/14, Legalis; judgment of the Court of Appeal in Warsaw of 27 June 2017, VI ACa 293/16, Legalis.

[27] See judgment of the Supreme Court of 7 October 2009 (III CSK 39/09, OSNC 2010, no. 4, item 100), according to which the "image" of a juridical person is to be understood as the entirety of features characterising that entity, as seen in the general public, especially determining its goodwill and commercial reputation.

[28] Act of 18 July 2002 on providing services by electronic means (consolidated text, Journals of Law 2020, item 344, as amended).

[29] See D. Kasprzycki, *Spam, czyli niezamawiana komercyjna poczta elektroniczna. Zagadnienia cywilnoprawne*, Kraków 2005, pp. 161–163.

[30] For more details on "notoriety", see J. Koczanowski, *op. cit.*, p. 145.

[31] See A. Kopff, *Koncepcja praw do intymności i do prywatności życia osobistego (zagadnienia konstrukcyjne)*, "Studia Cywilistyczne" 1972, vol. 20, p. 3 ff. The author supports the concept of private life as a personal interest.

[32] As in M. Pazdan, *Komentarz do art. 43…*; A. Cisek, *Dobra osobiste i ich niemajątkowa ochrona w kodeksie cywilnym*, Wrocław 1989, p. 64; A. Szpunar, *Ochrona dóbr osobistych przysługujących osobom prawnym*, [in:] *Problemy kodyfikacji prawa cywilnego. Księga pamiątkowa ku czci Profesora Z. Radwańskiego*, Poznań 1990, p. 33.

[33] As in P. Sobolewski, *Komentarz do art. 23*, [in:] *Kodeks cywilny…*; K. Motyka, *Prawo do prywatności i dylematy współczesnej ochrony praw człowieka*, Lublin 2006, p. 147.

[34] B. Kordasiewicz, *Jednostka wobec środków masowego przekazu*, Wrocław 1991, p. 85.

[35] M. Safjan, *Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych*, "Kwartalnik Prawa Prywatnego" 2002, no. 1, p. 232.

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interference. According to this view, privacy is considered precisely as a certain autonomy, independence in shaping one's behaviour, but also the possibility of controlling the information disseminated about the juridical person, taking into account the regulations providing for a statutory obligation to disclose certain information concerning it.[36] In this perspective, privacy remains in a certain connection with the identity of the juridical person, since it is expressed in the autonomy of shaping its activities, which is undoubtedly important from the point of view of the definition of identity. In addition, protecting information about the juridical person, the disclosure of which would constitute an interference with its sphere of autonomy and which constitutes its secrets, becomes relevant in this context. Covering the protection of information relating to a legal person by the concept of privacy should be limited to the information that is closely related to the juridical person as a legal entity, is its secrets and can be qualified as personal interests. However, this category does not include company secrets.[37]

DISTINCTIVE SIGNS AND IDENTITY OF THE JURIDICAL PERSON

An element that is definitely important for determining the identity of a juridical person is designating it in such a way that it can be separated, identified and distinguished from other structures. The elements that meet this criterion are primarily the name and the business name. The name is a personal interest of a juridical person and is an equivalent of the name of a natural person.[38] The business name is the name of a juridical person who is a trader (Article 432 CC). The nature of the right to this interest is not assessed uniformly. The prevailing view is of the mixed, personal-and-property nature of the right to the business name,[39] although it is also pointed out that it is a personal right, closely linked to the trader as a legal entity,[40] as well as a right of a property nature.[41] Both the right to the name and the right to

[36] A. Kubiak-Cyrul, *Dobra…*, pp. 187–188.

[37] See A. Bierć, *Ochrona prawna danych osobowych w sferze działalności gospodarczej w Polsce – aspekty cywilnoprawne*, [in:] *Ochrona danych osobowych*, ed. M. Wyrzykowski, Warszawa 1999, p. 113.

[38] A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2020, p. 260.

[39] A. Kubiak-Cyrul, *Komentarz do art. 43*, [in:] *Kodeks cywilny. Komentarz*, ed. M. Załucki, Legalis 2023; W. Popiołek, *Komentarz do art. 43[10]*, [in:] *Kodeks cywilny…*; U. Promińska, *Komentarz do art. 43[2]*, [in:] *Kodeks cywilny…*; judgment of the Court of Appeal in Krakow of 6 August 2015, I ACa 544/15, LEX no. 1916612.

[40] E. Gniewek, *Komentarz do art. 43[2]*, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Legalis 2023.

[41] M. Kępiński, *Komentarz do art. 43[10]*, [in:] *Kodeks cywilny…*; judgment of the Court of Appeal in Warsaw of 31 August 2012, I ACa 51/12, Legalis.

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the business name are absolute, they operate *erga omnes*. Moreover, both the name and the business name are non-transferable, they may not be transferred to another person, as emphasized with respect to the business name by Article 43^9 § 1 CC. They serve as a designation of a juridical person, to individualise and distinguish it from other entities operating in legal transactions.[42] Such meaning of business name was emphasized in Article 43^3 § 1 CC, according to which each business name should be sufficiently distinguishable from other business names operating on the same market.

Moreover, the designation (name) of its undertaking (Article 55^1 (1) CC) must be distinguished from the name or business name, since it serves to individualise the undertaking run by the juridical person. This designation is a property asset and is a component of the undertaking as a set of assets intended for the pursuit of business activity (Article 55 (1) CC).[43] It may be the same as the business name, but it does not have to be specified in the articles of association (or equivalent) and the rules of company law do not apply to it. It is not subject to registration; a juridical person may use more than one designation (e.g. different one for each organised part of the undertaking). The scope of the exclusivity of the designation of undertaking is set out in Article 5 of the Act on combating unfair competition,[44] since it may not mislead as to identity with another undertaking. The designation may be disposed of together with the undertaking and, in such a case, the acquirer may run it under its previous name, provided that the addition indicating the business name or name of the acquirer is affixed, unless the parties have decided otherwise (Article 43^8 § 3 CC).

A similar role can be played by additional signs, most often graphic, used as an addition to the name by legal entities that do not run an undertaking to designate their activities (e.g. an emblem). Such signs also serve to identify the juridical person but are not essential in this approach. They can be considered as personal interests of the juridical person insofar as they perform such a function and are closely linked to the juridical person as an entity.[45]

An individualising designation that plays an important role in determining the identity of a juridical person is also the Internet domain name. Its significance can be compared to that of the designation of an undertaking, as it serves to identify and distinguish the activities of the juridical person in electronic transactions. The right to an Internet domain name should be qualified as having a personal and property nature.[46]

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[42] Judgment of the Supreme Court of 28 October 1998, II CKN 25/98, OSNC 1999, no. 4, item 80.

[43] M. Kępiński, *Komentarz do art. 5*, [in:] *Ustawa o zwalczaniu nieuczciwej konkurencji. Komentarz*, ed. J. Szwaja, Warszawa 2019.

[44] Act of 16 April 1993 on combating unfair competition (consolidated text, Journal of Laws 2022, item 1233, as amended).

[45] A. Kubiak-Cyrul, *Dobra…*, p. 152.

[46] M. Andrzejewski, *Komentarz do art. 132[1]*, [in:] *Prawo własności przemysłowej. Komentarz*, ed. J. Sieńczyło-Chlabicz, Warszawa 2020; judgment of the Court of Appeal in Katowice of 13 June 2006, I ACa 272/06, OSA 2006, no. 3, item 2.

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In addition, other distinctive signs used by a juridical person, especially trademarks, may play a role in determining its identity.

STRUCTURAL CRITERIA THAT DETERMINE JURIDICAL PERSON'S IDENTITY

Structural criteria are those which relate to the basis for the formation of the juridical person's structure and the principles of its operation. The fundamental role, in terms of influencing the determination of the characteristics that affect the identity of a juridical person, is played by internal regulations (bye-laws) that shape that structure. The fundamental act of the entity is its statutes (charter, articles of association, etc.) (Article 35 CC). It determines the structure, organisation and rules of operation of the juridical person and forms a founding agreement or an element of such an agreement, necessary for the incorporation of the juridical person. Its legal nature is not assessed uniformly. It is regarded as a normative act of a social organisation or as a particular type of contract.[47] As regards juridical persons governed by private law, the statutes should be understood as a specific type of legal act of an intra-organisational nature, as declarations of will are made, in any event, by the authorised person(s) drafting the statutes. In corporate-type legal persons, the statute[48] is a specific type of contract,[49] while for company-type legal persons, the non-contractual concept is rather indicated.[50]

The minimum and compulsory content of the statutes under which a juridical person operates is determined by special provisions, in each case including in particular the name (business name), registered office, type of activity, organisational structure, composition and competences of the bodies, rights and obligations of the members, of course to the extent defined by law. Furthermore, the content of such act may also consist of other provisions, of an optional nature, provided for in the law or those which are not directly provided for by the law, but govern matters concerning

[47] M. Dziurda, *Komentarz do art. 35*, [in:] *Kodeks cywilny…*

[48] G. Tylec, *Statut spółdzielni i jego kontrola w postępowaniu o wpis do Krajowego Rejestru Sądowego*, Warszawa 2012, p. 40; M. Dębska, *Komentarz do art. 9*, [in:] *Ustawa o partiach politycznych. Komentarz*, Warszawa 2013.

[49] M. Dziurda, *Komentarz do art. 35…*; P. Księżak, *Komentarz do art. 35*, [in:] *Kodeks cywilny…*; judgment of the CJEU of 10 March 1992, C-214/89, *Powell Duffryn plc v. Wolfgang Petereit*, ECLI:EU:C:1992:115; resolution of the panel of 7 judges of the Supreme Court of 15 October 1985, III CZP 40/85, OSNC 1986, no. 6, item 86.

[50] A. Kidyba, [in:] *Kodeks cywilny. Komentarz*, ed. A. Kidyba, vol. 1, Warszawa 2012, p. 177; M. Pazdan, *Komentarz do art. 35*, [in:] *Kodeks cywilny…*

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the juridical person and fall within the limits of freedom of contract to the extent applicable in a given case.[51]

In addition to the statutes of a juridical person, its organisation and functioning are regulated by bye-laws, such as rules and regulations. These are primarily applicable to juridical persons with a complex internal structure. These are acts of a lower rank than the statutes of the entity, they may contain regulations detailing or supplementing its provisions, and thus determine the manner in which the activities of the governing bodies and their members are to be performed, the organisation of their work, the assignment of tasks, the rules for remunerating members of the governing bodies, but only to the extent that is not regulated by the statutes and does not require specification in the statutes. In each case, they create provisions applicable to internal relations.[52]

The significance of the statutes and internal regulations of juridical persons is expressed, i.a., in the fact that they define the manner in which the juridical person operates as an organisational unit, including the manner of making and presenting decisions. The significance of the legal construction of an organisational unit that is a juridical person is expressed in the fact that it allows applying a legal norm to a certain organisational structure that is made up of natural persons and at the same time distinguished from them due to the action aimed at achieving a specific goal common to the persons establishing the entity.[53] Such an effect is possible if the conduct of certain natural persons can be attributed not to them as subjects of law, but to the juridical person, and consequently refer the legal effects of this conduct to the legal sphere of such entity. Such relationship is described by the theory of organs expressed in Article 38 CC according to which a juridical person acts through its governing bodies as set out in the law and the entity's statutes based thereon.

The theory of organs is based on certain assumptions expressing the essence of operation through the bodies.[54] A body is an internal component of the organisational structure of each juridical person. It is of a mandatory nature since without governing bodies a juridical person is deprived of the possibility to act. The powers of the governing body are rooted in the law and the entity's statutes. A governing body has no legal personality, although is composed of individuals that are separate from the juridical

[51] See K. Kopaczyńska-Pieczniak, *Korporacja. Elementy konstrukcji prawnej*, Warszawa 2019, pp. 84–87.

[52] S. Sołtysiński, A. Opalski, *Zaskarżanie uchwał zarządów i rad nadzorczych spółek kapitałowych*, "Przegląd Prawa Handlowego" 2010, no. 11, p. 16; W. Popiołek, *Jeszcze w sprawie regulaminów rad nadzorczych spółek z ograniczoną odpowiedzialnością*, [in:] *Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga jubileuszowa Profesora Józefa Okolskiego*, ed. M. Modrzejewska, Warszawa 2010, p. 826.

[53] J. Frąckowiak, *op. cit.*, p. 1129; A. Herbet, [in:] *System Prawa Prywatnego*, vol. 16: *Prawo spółek osobowych*, ed. A. Szajkowski, Warszawa 2008, pp. 561–562.

[54] A. Kidyba, *op. cit.*, pp. 181–182.

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person. An important fact, from the point of view of the identity of a juridical person, is that a governing body consists of natural persons who, acting as the body, create and manifest the will of the juridical person, thus enabling it to exercise its capacity to perform acts in law. This means that, although psychologically it is the will of the natural persons who make up the body's composition, this will is attributed by law to that juridical person.[55] Consequently, it must be assumed that the relevant act is carried out by the juridical person. Not only do actions thus taken affect the identity of the legal entity, but they are also important in shaping its autonomy.

In the context of activities by bodies composed of natural persons, an issue arises whether or not it is possible to grant a juridical person the attribute of identity in the internal meaning, i.e. a sense of individuality and uniqueness. The mere possibility that a juridical person may be granted the attribute of will supports the view that that identity is created by acts of will originating from competent bodies and reflected in the acts they perform. The consequence of the theory of organs is the recognition that certain subjective circumstances existing on the part of natural persons who form the governing body are treated as occurring on the part of the juridical person (good or ill will, defects of declarations of will, fault).[56] One may therefore ask whether it is permissible for a governing body to create the sense of distinctiveness of the juridical person. However, the subjective element of sensation, important in this understanding of identity, is only attributable to natural persons, while juridical persons cannot be attributed the sense of identity.[57] Consequently, it cannot be considered that the persons comprising the body can create awareness of the distinctiveness of the juridical person. It seems that in such a case we are rather dealing with certain acts of awareness, feelings of natural persons who are members of the governing body and their ideas about the uniqueness and originality of the juridical person in which they participate and in which they create their activities.

ORGANISATIONAL CRITERIA THAT DETERMINE JURIDICAL PERSON'S IDENTITY

The identity of a juridical person is influenced by certain elements relating to its organisation and activities, which can be described as organisational. They are necessary for the juridical person to be recognised as an organisational unit and at

[55] E. Płonka, *Mechanizm łączenia skutków działań prawnych z osobami prawnymi na przykładzie spółek kapitałowych*, Wrocław 1994, p. 74.

[56] A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, pp. 251–252.

[57] P. Sobolewski, *Komentarz do art. 43…*; R. Szczepaniak, *op. cit.*; A. Kubiak-Cyrul, *Dobra…*, p. 167.

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the same time they make objective and perpetuate the individuality and uniqueness of each juridical person.[58]

A criterion affecting the identity of a juridical person is undoubtedly its type and kind, which is expressed in the adoption of a specific organisational and legal form. It can be a corporation-type (membership-based) or a foundation-type (asset-based) juridical person. The first group includes, in particular, commercial-law companies, cooperatives, associations (the so-called registered associations), chambers of commerce, trade unions, employers' associations and political parties. The second group includes mainly foundations and state-owned enterprises.

An indispensable element of each juridical person is the existence of a certain group of people, with a fixed structure and acting for a specific purpose. The human factor is necessary because only natural persons are able to make a decision and implement it.[59] This means that a juridical person will always be a certain group of people, where such persons may be members of such an entity or undertake activities within its operation in a different capacity, in particular as members of its governing bodies. Natural persons in the organisational structure of a juridical person who create its activities may be an element that distinguishes them individually from other entities taking part in transactions. This applies in particular to majority shareholders or members of management and executive bodies, employees, as well as to the sole shareholder in a single-member company. In this context, it is worth noting the view that the infringement of a personal interest of a legal person may be the dissemination of untrue and negative (abusive, humiliating, defamatory) information about natural persons who are members of the bodies of this juridical person, or its employees.[60]

Another criterion relevant to the existence and identity of a juridical person is the existence of a certain set of assets covering, in a broad sense, the property rights and obligations of that entity. In the context of property relations, of significant importance for the identification of a legal person and the determination of its identity may be undertaking in the objective sense (Article 55^1 CC) as a property collection, an organised group of intangible and tangible assets intended for the pursuit of economic activity. This criterion is relevant for juridical persons who are traders or not-for-profit entities. The composition of property, especially when it includes assets of a special, unique or individual nature, may be a factor that individualizes a juridical person. From this point of view, the company secrets, patents, know-how, utility models or industrial designs that are part of the undertaking may

[58] J. Frąckowiak, *op. cit.*, p. 1134; J. Koczanowski, *op. cit.*, p. 16.

[59] J. Frąckowiak, *op. cit.*, p. 1156.

[60] M. Pazdan, *Komentarz do art. 43…*; judgment of the Supreme Court of 11 January 2007, II CSK 392/08, OSP 2009, no. 5, item 55; judgment of the Supreme Court of 12 January 2012, I CSK 790/10, LEX no. 1129077. See also T. Wyka, *Rola Kodeksu pracy w ochronie dóbr osobistych stron stosunku pracy*, "Studia Iuridica Lublinensia" 2015, vol. 24(3), p. 299 ff.

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be of significant importance. The elements that distinguish and individualise the undertaking are also reputation and clients included as its components.[61]

As part of property relations, the element that determines the identity of a juridical person may also be the share capital present in its legal structure, or more precisely its amount. In the case of equity-based corporations, the value of such share capital may be a characteristic that affects the uniqueness of such an entity.

The purpose to be attained by the juridical person, as well as the type of business it carries out, also seem to be relevant to determining its identity. Such purpose may be economic or non-economic, profit or non-profit. The legislation in many cases limits the range of permissible purposes that can be pursued by juridical persons of a certain type. This especially applies to registered associations, foundations, cooperatives, political parties, trade unions or chambers of commerce. In other cases, they provide for freedom of choice of purpose, which is particularly the case for commercial-law companies.

A certain role in the context of determining the identity is also played by the registered office of a juridical person. It is subject to determination in the articles of association (statutes), and unless the law or the articles of association (statutes) based on it provides otherwise, pursuant to Article 41 CC, the registered office of a juridical person is the place where its management body is seated. It should be distinguished from the address of a juridical person, which also includes, in addition to the town/city, the identification of the street, house number or premises. The registered office as such does not constitute an element determining the identity of a juridical person, but it plays such a role when combined with other criteria, in particular the name (business name) and, above all, its address.

DESIGNATIONS OF A PUBLIC-LAW NATURE IDENTIFYING A LEGAL PERSON

The criteria to determine the identity of a juridical person and, at the same time, ensure its uniqueness, may also result from public-law regulations and constitute an expression of the fulfilment of the obligations created by the resulting norms. Of such nature are in particular signs identifying a juridical person resulting from its disclosure in relevant registers or records.

In this context, the designation and number resulting from the entry in the relevant register or records made during the incorporation of the juridical person is of significance. The rule is that an organisational unit acquires legal personality upon entry in the relevant register unless otherwise provided for in the special

[61] M. Poźniak-Niedzielska, *Zbycie przedsiębiorstwa w świetle zmian w kodeksie cywilnym*, "Państwo i Prawo" 1991, no. 6, p. 34; Z. Gawlik, [in:] *Kodeks cywilny…*, p. 298.

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provision (Article 37 § 1 CC). This procedure for obtaining the attribute of legal personality applies to most juridical persons and is expressed in an entry in the National Court Register (Pol. *Krajowy Rejestr Sądowy*), including the Business Register or the Register of Associations, other social or professional organisations, foundations and independent public healthcare establishments (Article 1 (1) (1) and (2) ANCR[62]). The entry of a juridical person in the relevant register is compulsory, with the obligation to obtain an entry arising from separate legislation (Article 3 ANCR) that governs the principles of establishing, organisation and dissolution of the juridical person concerned. It is made upon application and is constitutive in nature, which means that legal personality is acquired upon entry in the register. The entry thus has the legal effect of creating a juridical person. In any event, the entry in the relevant register shall give the juridical person an appropriate number, unique on a national scale.

It is worth emphasising here that the catalogue of data concerning a juridical person disclosed in the register includes a number of features indicated as defining its identity. This refers in particular to its name (business name), legal form, registered office and address, in certain cases – its members (shareholders), amount of share capital, members of the management and supervisory bodies, object of activity, NIP number and REGON number.[63] Thus, the National Court Register constitutes an official list of data allowing for the identification of a juridical person.

A consequence of registration is also the obtaining of further criteria for determining the identity of a juridical person in the external sense. Once the registration has been made, the data contained in the entry are transmitted via the ITC system to the Central Register of Entities – National Register of Taxpayers (CRP KEP – *Centralny Rejestr Podmiotów Krajowej Ewidencji Podatników*) and the National Official Register of National Economic Operators (REGON Register) (Article 20 (1c) ANCR). As a result, the juridical person is assigned a unique tax identification number (NIP – *numer identyfikacji podatkowej*) and the REGON identification number. Their assignment takes place automatically, immediately after the data transmitted from the National Court Register are posted with the CRP KEP via the ITC system (Article 8a (2) of the Act on the rules on recording and identifi-

[62] Act of 31 August 1997 on the National Court Register (consolidated text, Journal of Laws 2023, item 685, as amended).

[63] The data to be disclosed in the register of traders mention in Articles 38–44 ANCR. These rules also apply to the register of associations, other social and professional organisations, foundations and independent public health establishments (Article 49 (1) ANCR), taking into account the specific arrangements under Articles 49–53a ANCR. Detailed rules are laid down in the Regulation of the Minister of Justice of 17 November 2014 on the detailed method of maintaining registers included in the National Court Register and the detailed content of entries in these registers (Journal of Laws 2014, item 1667).

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cation of taxpayers and withholding agents,[64] Article 42 (11) of the Act on public statistics[65]).[66] These numbers are then automatically entered in the National Court Register (Article 20 (1a) ANCR).

The nature of the identification designations thus granted is debatable under private law. They may be regarded as specific personal interests of the juridical person, falling within the category of individualising signs and thus enabling it to be distinguished from other entities taking part in transactions. The importance of the numbers assigned to a juridical person for the purpose of identifying it and thus determining its identity is underlined by the rules that set out an obligation to use them in transactions (Article 34 (1) ANCR, Article 20 (1) and (2) of the Entrepreneurs' Law[67]).

CONCLUSIONS

As regards juridical persons, it seems justified to construct their personal interests in the form of their identity, which is expressed in the uniqueness and individuality of each juridical person. There should be no doubt as to the possibility of distinguishing and individualising a juridical person in external terms. The assessment of this interest should be based on an objective criterion, as the elements allowing for the determination of this identity are precisely of an objective nature. They are diverse, they result from the characteristics of the juridical person in question and are elements that create the juridical person as an administrative entity. Among these, criteria of a systemic and organisational nature can be distinguished. Moreover, in this perspective, the distinctive signs used by the juridical person, as well as the individualising signs given as a result of the performance of public law obligations, are also decisive for determining the identity of the juridical person. It is in the objective dimension of identity that a fundamental difference should be seen in comparison to the image, which determines the way in which the juridical person is perceived on the basis of the criteria constituting the determinants of its identity.[68]

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[64] Act of 13 October 1995 on the rules on recording and identification of taxpayers and withholding agents (consolidated text, Journal of Laws 2022, item 2500, as amended).

[65] Act of 29 June 1995 on public statistics (consolidated text, Journal of Laws 2023, item 773, as amended).

[66] On the procedure of assigning a NIP number, see T. Lewandowski, P. Ostojski, *Komentarz do art. 8a*, [in:] *Zasady ewidencji i identyfikacji podatników i płatników. Komentarz*, LEX/el. 2013.

[67] Act of 6 March 2018 – Entrepreneurs' Law (consolidated text, Journal of Laws 2023, item 221, as amended).

[68] J. Koczanowski, *op. cit.*, p. 145. It is assumed that the right to identity of a juridical person constitutes a specific functional combination of personal interests from the sphere of individualising signs, good name and freedom, but without being either of them.

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On the other hand, it is difficult to recognise juridical person's identity in the internal sense, as it should be included in the sphere of sensation and psychological experience characteristic only of natural persons. This, however, gives rise to the issue of the possibility of infringing the right to identity of persons managing the juridical person, acting as its bodies, or its strategic investors, resulting in a violation of the right to the identity of the legal person.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy i zawiera wyniki badań prowadzonych na gruncie polskiego prawa cywilnego i handlowego. Tematem badań było ustalenie, czy osobie prawnej przysługuje dobro osobiste w postaci tożsamości oraz prawo do tożsamości. Ponadto celem było wyznaczenie cech i właściwości decydujących o tożsamości osoby prawnej. Podjęcie się analizy wskazanego zagadnienia ma znaczenie nie tylko teoretyczne, lecz także praktyczne z uwagi na problematykę naruszenia prawa do tożsamości przysługującego osobie prawnej. Na gruncie prawa prywatnego tożsamość jako dobro osobiste można ujmować dwojako. Należy wyróżnić tożsamość w ujęciu wewnętrznym, wyrażającą się w świadomości niepowtarzalności i odrębności, oraz tożsamość w ujęciu zewnętrznym, oznaczającą zespół cech pozwalających na indywidualizację i identyfikację określonej jednostki. Główna teza sprowadza się do stwierdzenia, że osobie prawnej przysługuje tożsamość jako dobro osobiste oraz prawo do tożsamości. Tożsamość osoby prawnej oznacza jej identyczność i może być ujmowana tylko w aspekcie zewnętrznym. Tak rozumiana tożsamość wymaga wyodrębnienia na tle innych dóbr osobistych osoby prawnej, takich jak w szczególności jej dobre imię, wizerunek czy prywatność. Ocena znaczenia i klasyfikacja elementów konstrukcji osoby prawnej, pozwalających na określenie jej tożsamości, pozwalają na wyodrębnienie wśród nich oznaczeń odróżniających, oznaczeń identyfikujących oraz czynników o charakterze ustrojowym i organizacyjnym.

Słowa kluczowe: tożsamość; osoba prawna; dobra osobiste