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## The community property regime in the context of conducting a business activity and acquisition of shares in a limited liability company Małżeńska wspólność majątkowa a prowadzenie działalności gospodarczej i nabywanie udziałów w spółce z o.o.

**Abstract:** *The issue, regarded as an important aspect of conducting a business activity, namely the legal effects of acquisition, financed from community property, of shares in a limited liability company by spouses who have chosen the community property regime, has long been debated among representatives of legal science. It also brings about a considerable difficulty in the practice of economic trading, which is an important issue as companies of this type are the most popular form of conducting a business activity in Poland. Doubts concerning the shape of legislative solutions regulating the issue in question are unquestionably exacerbated by the fact that the said regulations belong to both, the sphere of family law and the sphere of commercial companies law, which makes us expect appropriate legislative intervention in this respect. This article aims to present the issue concerning acquisition of shares in limited liability companies on the basis of the Family and Guardianship Code, which is further considered in a subsequent publication that aims to present the solutions adopted in this respect in the Code of Commercial Partnerships and Companies.*

**Keywords:** marriage, property union, limited liability company

**Streszczenie:** *Problematyka stanowiąca ważny aspekt prowadzenia działalności gospodarczej skutków prawnych objęcia i nabycia za środki pochodzące z majątku wspólnego przez małżonków udziałów w spółkach z ograniczoną odpowiedzialnością, które znajdują się w ustroju małżeńskiej wspólności majątkowej, od dawna jest przedmiotem dyskusji wśród przedstawicieli nauki prawa. Wzbudza ona też doniosłe trudności w praktyce obrotu gospodarczego, co jest istotnym problemem z uwagi na popularność tego typu spółek jako podstawowej formy prowadzenia działalności gospodarczej w naszym kraju. Powstawaniu wątpliwości dotyczących kształtu rozwiązań legislacyjnych regulujących omawianą problematykę sprzyja niewątpliwie przynależność wspomnianych regulacji zarówno do sfery prawa rodzinnego, jak i do prawa spółek handlowych, co skłania do oczekiwania na podjęcie tutaj stosownej interwencji ze strony ustawodawcy.*

*Niniejszy artykuł ma na celu przedstawienie zagadnień dotyczących nabywania udziałów w spółkach z o.o. na gruncie Kodeksu rodzinnego i opiekuńczego, przy czym rozważania te będą kontynuowane w ramach kolejnej publikacji zmierzającej do pokazania przyjętych w tej mierze rozwiązań Kodeksu spółek handlowych.*

**Słowa kluczowe:** małżeństwo, wspólność majątkowa, spółka z ograniczoną odpowiedzialnością

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## Introduction

The need to use the possessed property assets that became stronger during the period of system transformation resulted in a considerable increase in the level of the private economic activity of spouses, which in the context of more and more intense economic trading is often manifested in the form of commercial law companies. Conducting this type of activity corresponds with a more and more frequent entry by married people into material legal transactions, individually (that is without the cooperation of the other spouse) and, usually, without modifying the marital property regime between the spouses. Besides, recent years have seen an increase in the number of civil court proceedings under which validity of agreements concluded in this very manner is questioned<sup>2</sup>.

In the economic and social reality of Poland, most marriages function on the basis of the statutory property regime which is not, however, a uniform structure. This is because the statutory community of property regime provides for a potential existence of three separate complexes of property, namely the wife's personal property, the husband's personal property and the community property of spouses. Individual objects are attributed to the community property or personal property of spouses in accordance with the provisions of the Family and Guardianship Code of 1964<sup>3</sup>. Pursuant to Article 31 §1 of this Act, a consequence of entering into marriage is the creation *ex lege* of the statutory marital property regime which covers all assets acquired by one or both spouses during the of statutory community of property regime (community property).

The last of the above mentioned complexes of property may include, not only the house, the car or bank savings, but also shares in share capital of a limited liability company. In practice, the most common case of co-ownership of shares in institutions of this type is the community of property regime, under which the shares are included within the community property of the spouses.

This corresponds to the still high number of limited liability companies, which (in addition to a civil law partnership) throughout the period of system transformation have constituted the basic form of conducting a business activity in Poland<sup>4</sup>. This is most probably due to lower (as compared to a joint stock company) organizational and capital requirements<sup>5</sup>, as well as exclusion of the possibility of the shareholders being held personally liable for the obligations of the company. For these reasons, many a time, the spouse while considering his/her chances for successful participation in economic trading, decides to

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<sup>2</sup> This if for example pointed out by A. Brzezińska, *Intercyzy – umowy małżeńskie*, Dom Wydawniczy ABC, Warszawa 2006, p. 137. See also in particular T. Smyczyński, *Kierunki reformy Kodeksu rodzinnego i opiekuńczego*, „Kwartalnik Prawa Prywatnego” 1999, vol. 2, p. 313.

<sup>3</sup> The Act of 25 February 1964 – Kodeks rodzinny i opiekuńczy (consolidated text Dz.U. of 2015 item 2082). The Act is hereinafter referred to as the FGC.

<sup>4</sup> According *Rocznik Statystyczny Rzeczypospolitej Polskiej* in 2014 more than 317,000 limited liability companies existed in Poland (cf. in this respect *Rocznik Statystyczny Rzeczypospolitej Polskiej*, Warszawa 2014, p. 737). Apparently, this is the most popular type of company in Poland, and nearly half of those participating in such legal and organisational forms decide to conduct business activity in the form of a limited liability company.

<sup>5</sup> A minimum share capital in a limited liability company, as specified by the Polish legislator, is currently only 5 thousand zloty (PLN 5,000). See Article 154 §1 of the Act of 15 September 2000 – Kodeks spółek handlowych (consolidated text Dz.U. of 2013 item 1030) – hereinafter referred to as the CCPC.

engage his/her own or joint resources in order to acquire a share in a limited liability company, thus protecting his/her own and family assets against claims of the company creditors.

In the light of the above mentioned findings, one may conclude that issues relating to management of shares in companies of this type acquired by one, or jointly entitled spouses and financed from the community property of spouses are of key importance for the practice of economic trade functioning. Another fact that one should become aware of is that along with the gradual increase of social wealth or in connection with the development of market relationships in Poland, the practical and economic significance of the issues signalled herein will undoubtedly grow. Therefore, it is worthwhile to point out the gravity of certain issues that arise in this area and look for appropriate legal solutions (also through the analysis of proposals made within the jurisprudence).

### **The common property of the spouses and acquisition of shares in a limited liability company**

It must be realised that for many years issues relating to the functioning of statutory rules of the community of property regime have been causing the largest interpretative problems and belong to the most disputable issues, in terms of both the theoretical and practical application of law. This is corroborated, in particular, by the views of jurisprudence<sup>6</sup>, as well as discrepant judgments of the Supreme Court (SC)<sup>7</sup>.

No major doubts are aroused by a situation when both spouses jointly take up (acquire) rights in a company with the use of resources from community property. Then, such persons are regarded under Article 184 §2 of the CCPC as joint rightholders in respect of management of shares in a limited liability company and the shares are covered by the community of property regime. The rule resulting from Article 184 of the Code of Commercial Partnerships and Companies is that participation rights may be simultaneously vested in two or more persons, both under fractional co-ownership and joint co-ownership<sup>8</sup>.

What is more, no major doubts are aroused in a situation when one of the spouses acquires shares with resources from his/her personal property. Then, in accordance with the principle of subrogation envisaged in Article 33 point 10 of the CCPC, the assets are only included within the property of this spouse-purchaser. It is pointed out, however, that there exist no obstacles to the

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<sup>6</sup> A number of interpretative misunderstandings stem sometimes from failure to notice differences between legal regulations relating to shares in limited liability companies. See A. Chłopecki, *Akcje zdematerializowane w małżeńskiej wspólności majątkowej*, „Przegląd Prawa Handlowego” 2008, vol. 10, p. 46.

<sup>7</sup> Examples of relevant judgments will be presented further in the article. As regards literature on the issue and the standpoint of the judicature on this issue, see in particular A. Szajkowski, M. Tarska, (in:) Sołtysiński et al., *Kodeks spółek handlowych, vol. II. Spółka z ograniczoną odpowiedzialnością: komentarz do artykułów 151-300*, C.H. Beck, Warszawa 2014, p. 313-317 (below citation as A.Szajkowski, M.Tarska, *KSH. Komentarz 2014*).

<sup>8</sup> See in particular statement of reasons, prepared on the basis of the Commercial Code of 1934, to: judgment of the Supreme Court of 22 May 1996, case ref. no. III CZP 49/96, OSNC 1996/9 item 119. It is generally believed in jurisprudence that the character of jointly held shares in a limited liability company is that of joint ownership of shares. See in particular A.Szajkowski, M.Tarska, *KSH. Komentarz 2014*, p. 311.

acquisition of this type to the community property of spouses. In addition, it is pointed out that in this case the incurred purchase price should be regarded as expenditure from personal property to community property, subject to settlement under separate procedure envisaged in Article 45 of the CCPC<sup>9</sup>.

In both of the above mentioned situations, the status of the spouses in a limited liability company is that of a "joint shareholder". In the former case, the share is taken up under joint co-ownership (an example of which being the community of property regime)<sup>10</sup>, and in the latter case under fractional co-ownership<sup>11</sup>.

In practice, numerous controversies are triggered by acquisition of shares by one of the jointly entitled spouses living under the community of property regime with resources from the community property of the spouses. It is possible to imagine a situation in which only one of the spouses (being in possession of the resources) participated in the relevant legal transaction and signed corporate documents, which led to taking up shares in the share capital of a limited liability company. The question then arises whether the shares acquired by the spouse from the community property of the spouses are an object of community property or whether they become the separate property of the spouse-purchaser of the shares. Thus, it needs to be explained whether the shareholder's spouse will be vested with the status of a shareholder entered in the share register as a joint rightholder, who under the said shares may without any obstacles freely manage them as an active member of a given limited liability company.

What should be considered in this case is the fact of exercising certain corporate rights which result from the corporate relationship, and not only property rights (such as the right to a dividend or to take up new shares in the company). Acquisition of shares in the share capital of a limited liability company also entails non-property rights, in particular the right to participate in the meeting of shareholders, the right to vote and the possibility to obtain information on the company's affairs<sup>12</sup>.

In consequence of this situation, the question arises as to whether the spouse who has not signed any corporate documents can fully exercise the rights relating to management of the held share. One should, therefore, consider whether the spouse may, in particular, challenge resolutions adopted by the meeting of shareholders or whether he/she is only entitled to receive a dividend.

The above mentioned situation could be resolved through submission by the shareholder of a statement clarifying whether the acquired shares belong to the personal property of the shareholder or to the community property of spouses and clarifying the origin of resources received by the company in exchange for the shares. Another important aspect is notifying the company of the joint holding of the shares (which should be clearly stated in the document under which the spouse acquires shares in the company). At this point there arise, however, obvious difficulties associated with the submission of a false statement in this re-

<sup>9</sup> R. Pabis, (in:) J. Bieniak et al., *Kodeks spółek handlowych. Komentarz*, C.H. Beck, Warszawa 2014, p. 709-710.

<sup>10</sup> See Article 31 et seq. of the Act of 25 February 1964.

<sup>11</sup> For more detailed information see in particular J.M. Łukasiewicz, *Małżeńska współzależność majątkowa w polskim prawie cywilnym*, C.H. Beck, Warszawa 2013, p. 121-122.

<sup>12</sup> For more detailed information on the said rights in a limited liability company see in particular A. Szajkowski, M. Tarska, *Prawo spółek handlowych*, C.H. Beck, Warszawa 2005, p. 398 et seq.

spect and its potential verification, etc. Such a situation gives rise to doubts concerning the exercise of rights and obligations resulting from articles of association, and in particular whether in this case, both spouses should act jointly or whether the activity of one of these persons suffices<sup>13</sup>.

Pursuant to the Family and Guardianship Code, the legislator strives to stabilise the marital property rights by sanctioning the creation of the community property of spouses and introducing the principles of their mandatory cooperation in the management thereof<sup>14</sup>. At the same time, during the statutory community of property regime, neither spouse may request the division of community property. In addition to this, neither spouse may dispose of or undertake to dispose of, a share of community property or of a particular asset thereof that would fall to him/her when the statutory regime ceases<sup>15</sup>.

Pursuant to the provisions of the CCPC, the only issue of importance for a given property right (in the form e.g. of a share in a limited liability company) to be attributed to community property is that this must take place during the statutory community of property regime between the spouses<sup>16</sup>.

On the other hand, an exception to the above rule is that the asset belongs to the personal property of the spouses, which must result, however, from a specific legal regulation<sup>17</sup>. It must be noted that the legislator, while devising in Article 33 of the CCPC an exhaustive list of objects of the personal property of the spouses, has not included in the provision any shares in companies. Thus, it may be concluded *a contrario* that shares in limited liability companies, acquired during the community of property regime with resources from the community property of spouses are included *ex lege* in this complex of assets. Because it is so by operation of law, the fact whether the spouses have previously decided to bring about such a legal effect is not important at all.

Even if shares in a limited liability company are attributed to the community property of spouses, it does not mean that the shareholder status is vested in both spouses. It must be assumed, however, that a member of a company is only the person who is a party to the legal transaction under which the shares are acquired (in the majority of situations it takes the form of articles of association or a contract for the disposal of shares)<sup>18</sup>. Only such a person may be entered in the share register and only he/she has the rights and obligations of a shareholder (such as the right to vote, receive a dividend or an obligation to make additional

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<sup>13</sup> R. Pabis, (in:) J. Bieniak et al., *Kodeks spółek...*, p. 709-710.

<sup>14</sup> See Article 31 § 1 and Article 36 § 1 of this Act.

<sup>15</sup> Such solutions are introduced under Article 35 Kodeksu rodzinnego i opiekuńczego.

<sup>16</sup> For more information see in particular K. Pietrzykowski, (in:) *Kodeks rodzinny i opiekuńczy. Komentarz*, K. Pietrzykowski (ed.), C.H.Beck, Warszawa 2015, p. 302 et seq.

<sup>17</sup> See e.g. A. Malarewicz, A. Sobolewska, *Małżeńskie ustroje majątkowe w świetle zmian wprowadzonych ustawą z dnia czerwca 2004 r. o zmianie ustawy – Kodeks rodzinny i opiekuńczy oraz niektórych innych*, „Radca Prawny” 2004, vol. 6, p. 112.

<sup>18</sup> This standpoint is taken in the relevant literature, among others, by A. Opalski, (in:) S. Sołtysiński, (ed.), *System prawa prywatnego, vol. 17B. Prawo spółek kapitałowych*, C.H. Beck, Warszawa 2010, p. 284 et seq.; K. Bilewska, *Prawa udziałowe w spółkach kapitałowych a majątek wspólny małżonków – wybrane zagadnienia*, „Palestra” 2006, vol. 9-10, p. 100-101; S. Sołtysiński, M. Mataczyński, (in:) *Kodeks spółek handlowych, vol. III. Komentarz do art. 301-458*, Sołtysiński et al., C.H. Beck, Warszawa 2008, p. 284; K. Kopaczyńska-Pieczniak, *Ustanie członkostwa w spółce z ograniczoną odpowiedzialnością*, Kraków 2002, p. 70-71.

capital contributions). Because his/her spouse is not a member of the company, he/she may not, in particular, request the right to participate in the general meeting of shareholders or exercise his/her voting rights during such a meeting.

In a broad sense, management of the community property of spouses consists of taking various types of actual and legal actions relating to specific objects of community property (including shares held by the spouses in limited liability companies)<sup>19</sup>. Pursuant to Article 36 §2 of the CCPC, the management comprises actions relating to such objects (including actions aimed at the preservation of community property).

### Marriage law for self-management of common property

Pursuant to the Family and Guardianship Code, the legislator grants to each spouse the right to individually manage community property, subject to exceptions introduced under this Act (this concerns, in particular, situations in which the consent of the spouse is required for validity of a legal transaction)<sup>20</sup>. This issue may materialize itself, in particular, when shares are taken up in exchange for contributions in the form for example of the right of ownership of real property, perpetual usufruct, premises or enterprise (see Article 37 §1 of the Family and Guardianship Code).

It is worthwhile to point out that in the relevant literature the term “individual management of community property”, which is the pillar of the current structure of the community property regime, arouses controversy. What is more, it is highly problematic to separate the terms of importance from issues relating to the management of shares in limited liability companies, namely: “independent management” or “cooperation in management” or determination of relationships between them. In addition, there are difficulties relating to the existence of dissonance between particular provisions of the CCPC that govern issues associated with the management of the common property of spouses<sup>21</sup>. It must be pointed out, however, that obtaining the consent of the spouse is necessary for the successful execution of certain moves. Article 37 §1 of the discussed Act contains an exhaustive list of this type of transaction, yet the legislator has not included therein, a legal transaction consisting of the acquisition (taking up) of participation units in a company<sup>22</sup>. For this reason, in respect to shares held under the com-

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<sup>19</sup> A. Chłopecki, *Akcje zdematerializowane...*, p. 50. For more detailed information on such management see in particular S.K. Rzonca, *Pojęcie zarządu majątkiem wspólnym małżonków*, Wydawnictwo Prawnicze, Warszawa 1982 and G. Jędrejek, (in:) G. Jędrejek, P. Pogonowski, *Działalność gospodarcza małżonków*, LexisNexis, Warszawa 2002, p. 106 et seq.; J. Ignaczewski, *Małżeńskie ustroje majątkowe: art. 31-56 KRO: komentarz*, C.H. Beck, Warszawa 2008, p. 85 et seq.

<sup>20</sup> See in this respect Article 36 § 2 of the CCPC and Article 37 of the CCPC.

<sup>21</sup> This relates e.g. to the relationship of Article 36 § 2 of the CCPC to Article 37 of the CCPC and of Article 29 of the CCPC to Article 36 § 3 of this Act. In the last case, it is about determining whether independent actions of one of the spouses consist in the manner of his/her participation in legal trading or in the impact on the other spouse caused by his/her own actions. For more detailed information see M. Futrzyńska-Mielcarzewicz, S. Słotwiński, *Węzłowe zagadnienia zarządu majątkiem wspólnym. Analiza dogmatyczno-prawna. Część II – zagadnienia szczegółowe*, „Acta Iuris Stetinensis” 2014, vol. 8, p. 134 et seq. (including the relevant literature cited therein).

<sup>22</sup> This is emphasised, among others, by M. Rodzyńkiewicz, *Kodeks spółek handlowych: komentarz*, LexisNexis, Warszawa 2014, p. 324. The jurisprudence indicates that the consent of the spouse

munity property regime, appointment of a joint representative to exercise the rights resulting from these shares in the company is subject to the already cited rule of independent management of community property by each of the spouses (Article 36 §2 of the CCPC).

While examining the issues relating to the management of shares in a limited liability company held under community of property regime, it is also worthwhile to take into account the content of Article 361 §1 of the CCPC. In accordance with this provision, a spouse may oppose a transaction concerning the management of community property (e.g. disposal or pledge of jointly held shares) that is contemplated by the other spouse. Such opposition as a tool for blocking the activities of the other spouse towards the company will be effective, however, to the extent that a third party becomes aware of it before such a legal transaction is made (see Article 361 §2 of the CCPC)<sup>23</sup>.

The regulation in question is undoubtedly of great practical importance as it makes it possible for the spouse, who is not officially a member of a limited liability company, to protect the economic interests of the family as the community. In particular, the objection may constitute a useful tool to counteract disloyal, dishonest, inconsiderate or thrifty behaviour of the other spouse. It is worthwhile to realise that they may lead (e.g. in the case of such pathological phenomena as alcoholism or drug-addiction) to unreasonable or even detrimental the disposal of shares in a limited liability company. One may imagine here for example disposal of shares (triggered by a sudden need to raise financial means) under exceptionally unfavourable conditions, e.g. when shares of this type lose value during an economic crisis, downturn in economic activity, etc.

It is pointed out in the jurisprudence, however, that the requirement of cooperation between the spouses in the management of rights resulting from the shares, or of obtaining consent to dispose thereof (Article 36 §2 of the CCPC) is difficult to reconcile with regulations of the Code of Commercial Partnerships and Companies where these rights are reserved exclusively to the shareholder. It is emphasised, however, that although the share is attributed to community property, the other spouse does not become a party to the membership relationship, and his/her influence on the implementation of the shareholder status takes place beyond the legal relationship existing between the company and the shareholder and does not evoke any legal effects in this respect<sup>24</sup>. In a situation when only one of the spouses establishes a membership relationship with the company, only he/she becomes a party thereto and the resulting rights and obligations are vested exclusively in him/her. On the other hand, the concept of joint membership may not apply, since it is only applicable to both spouses joining the company together<sup>25</sup>.

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concerns objects of significant value and importance for the existence of the family. See J. Ignaczewski, *Relacje majątkowe między małżonkami*, Ośrodek Doradztwa i Doskonalenia Kadr, Gdańsk 2005, p. 43.

<sup>23</sup> The jurisprudence emphasises the need to articulate opposition in an unambiguous manner from the point of view of a contracting party to the transaction contemplated by the other spouse. Cf. judgment of the Court of Appeal in Katowice of 20 February 2009 (case ref. no. I ACa 32/09). For more detailed information on the discussed opposition see e.g. J. Ignaczewski, *Relacje majątkowe...*, p. 49 et seq.

<sup>24</sup> See in particular K. Kopaczyńska-Pieczniak, *Ustanie członkostwa...*, p. 70-71 (including the jurisprudence and literature cited therein).

<sup>25</sup> *Ibidem*, p. 69 et seq.

It is also argued that while the provisions of family law regulate general rules of handling community property, the provisions of company law regulate specific rules of the exercise of rights by joint rightholders to the share. Thus, the previously cited Article 184 of the CCPC (as a specific regulation) has priority over the regulation included in Article 36 §2 of the CCPC<sup>26</sup>.

This position is also regarded as appropriate from the point of view of the reasonable management of shares in a limited liability company. It serves as a means to eliminate potential protests that may be raised (pursuant to Article 36<sup>1</sup> §1 of the CCPC) by the other spouse even before a given action is taken by a company member. This type of opposition could only arouse unnecessary doubts as to the effectiveness of the spouse's voting during the meeting of shareholders<sup>27</sup>.

The provisions of the Code of Commercial Partnerships and Companies do not regulate, however, property issues, internal relationships between the spouses, assignment of shares to a given property complex or the manner of how such assets should be managed. This is the sphere of internal relations, which is subject to the provisions of the Family and Guardianship Code regulating the property issues existing between the spouses.

It should be noted that solutions adopted pursuant to marital property law are perceived as excessively hampering the trade in shares or complicating the exercise of the resulting property rights within an extensive part of jurisprudence<sup>28</sup>.

Because of persistent ambiguity relating to the issue in question, for many years there has been sought a legal solution to determine in the provisions regulating the marital property rights of the spouses where the acquired shares belong.

Some authors embrace the opinion that the acquired shares do not become community property but constitute separate property of the spouse (despite having been acquired from community property). This is to be decided by the content of the statement on taking up the share, on the basis of which the purchaser enters into the membership relationship with the company, and the share as a uniform subjective right constitutes an element thereof<sup>29</sup>.

In accordance with different concepts, both spouses automatically become a member in the discussed situation. In addition, it has been stated that such status is also officially acquired by the spouse who does not participate in the taking up of shares, but not earlier than at the moment when the company is notified of an intention to exercise participation rights<sup>30</sup>.

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<sup>26</sup> T. Kurnicki, *Pozycja współmałżonków udziałowców i akcjonariuszy spółek kapitałowych*, „Prawo Spółek” 2004, vol. 12, p. 24. See also K. Gromek, *Kodeks rodzinny i opiekuńczy: komentarz*, C.H. Beck, Warszawa 2009, p. 662-663.

<sup>27</sup> Ibidem.

<sup>28</sup> M. Nazar, *Komercjalizacja majątkowych stosunków małżeńskich w spółkach kapitałowych*, (in:) *Współczesne problemy prawa handlowego. Księga jubileuszowa dedykowana prof. dr hab. Marii Poźniak-Niedzielskiej*, A. Kidyba, R. Skubisz (eds.), Wolters Kluwer business, Warszawa 2007, p. 204; J. Naworski, *Nowelizacja przepisów kodeksu spółek handlowych o spółce z ograniczoną odpowiedzialnością, cz. I*, „Monitor Prawniczy” 2004, vol. 9, p. 400.

<sup>29</sup> See for example T. Siemiątkowski, J. Potrzezszcz, (in:) *Komentarz do Kodeksu spółek handlowych. Spółka akcyjna i przepisy karne*, J. Potrzezszcz, T. Siemiątkowski (ed.), LexisNexis, Warszawa 2003, p. 337-338 or K. Wręszczyka, *Udział w spółce z ograniczoną odpowiedzialnością a wspólność majątkowa małżonków*, „Przegląd Prawa Handlowego” 2001, vol. 8, p. 36 et seq.

<sup>30</sup> A review of individual standpoints on the discussed issues within the relevant literature has been done, among others, by R. L. Kwaśnicki, *Wykonywanie praw z udziałów/akcji...*, p. 77 et seq. and

## Summary

The state of the discussed debate corresponds to the judicature standpoint, which has failed to formulate a uniform concept of solving the issue of share acquisition by spouses contributing to community property and a possibility of joint exercise thereof. In some cases, the Supreme Court has taken into account institutions of the family law in its rulings and referred to solutions associated with assets being attributed to community property or personal the property of the spouses. In the light of views of this type adopted in the judicature, the regime based on joint co-ownership of assets is regarded as posing no obstacles to the acquisition or taking up of shares or the exercise of rights resulting therefrom<sup>31</sup>.

The issue of marital property rights in the context of business activity conducted in the form of a company or partnership raise fairly serious doubts as far as the practical application of the law is concerned, mostly due to the incompatible model of the system of commercial companies and partnerships and the community of property regime. That is why, further references to these issues are made in a subsequent article, which presents regulations adopted by the legislator on the basis of the Code of Commercial Partnerships and Companies<sup>32</sup>.

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<sup>31</sup> Resolution of the SC of 22 May 1996 r., III CZP 49/96, (OSNC 1996, vol. 9, item 119).

<sup>32</sup> The article will be probably published under the title: *Z problematyki prowadzenia działalności gospodarczej i wykonywania praw oraz obowiązków udziałowych przez małżonków w spółce z o.o.* in one of the „Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach. Seria: Administracja i Zarządzanie”.

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#### Legal acts

- Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz.U. z 2015 r., poz. 2082).
- Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych (Dz.U. z 2013 r., poz. 1030).

Court case law

Uchwała Sądu Najwyższego z dnia 22 maja 1996 r., sygn. III CZP 49/96, OSNC 1996/9 poz. 119.

Wyrok Sądu Apelacyjnego w Katowicach z dnia 20 lutego 2009 r. (sygn. I ACa 32/09).