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BANK ACCOUNT OF A CAMPAIGN COMMITTEE

RACHUNEK BANKOWY KOMITETU WYBORCZEGO

Summary: This study covers the subject matter of bank accounts of campaign committees, including the ones taking part in the local government elections of 2018. It was also the author's intention to discuss the background of the subject matter, which is why the presented discussion of the legislative framework refers also to bank accounts in general. Such an approach allows to refer the conclusions drawn to campaign committees taking part in other elections. Using the formal dogmatic method, the Author discusses the legal grounds for establishing cooperation between a bank and a customer (as parties to a bank account contract) and, then, between a bank and a campaign committee (as a specific customer type), obligations of the parties to that relationship and the bank's obligations under other provisions performed in relation to campaign committees and bank accounts maintained for such campaign committees, including in particular in the area of counteracting money laundering and terrorist financing, and their impact on the performance of supervisory obligations and safety of the economic system.

Keywords: compliance, bank activities, bank account, campaign committee's activities, financial management of a campaign committee, AML, bank customer, consumer

Streszczenie: Niniejsze opracowanie dotyczy problematyki rachunków bankowych komitetów wyborczych, w tym także tych biorących udział w wyborach samorządowych w 2018 r. Intencją autora było również omówienie tła tej problematyki, dlatego zaprezentowane omówienie stanu prawnego odnosi się także do rachunków bankowych w ogóle. Takie ujęcie pozwala na odniesienie sformułowanych wniosków do komitetów wyborczych biorących udział w innych wyborach. Z wykorzystaniem metody formalno-dogmatycznej autor omawia prawne podstawy nawiązywania współpracy pomiędzy bankiem i klientem (jako stronami umowy rachunku bankowego) oraz następnie pomiędzy bankiem i komitetem wyborczym (jako szczególnego rodzaju klientem), obowiązki stron tej relacji oraz obowiązki banku wynikające z innych przepisów wykonywane w stosunku do komitetów wyborczych i prowadzonych dla nich rachunków bankowych, w tym w szczególności z zakresu przeciwdziałania praniu pieniędzy oraz finansowaniu terroryzmu, a także ich wpływ na wykonywanie obowiązków nadzorczych i bezpieczeństwo systemu gospodarczego.

Słowa kluczowe: compliance, działalność banków, rachunek bankowy, działalność komitetu wyborczego, gospodarka finansowa komitetu wyborczego, AML, klient banku, konsument

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INTRODUCTION

The local government election that took place in 2018 was organized and carried out under the provisions of the Electoral Code[1]. One of the types of entities whose participation in the election was necessary were campaign committees. That necessity was primarily dictated by the fact that an electoral committee is the only entity entitled under the Electoral Code to nominate candidates in elections, including in local government elections, as laid down expressly in the first sentence of Art. 84 § 1 of the Electoral Code. The main responsibility of a committee, apart from the said nomination of candidates, is to run, on an exclusive basis, the electoral campaign supporting the candidates[2].

The provisions of the Electoral Code also specify the terms of financing electoral campaigns, including the terms and place of collecting and expending the campaign committee's means[3]. Regardless of the entity which formed the campaign committee, its financial means are deposited in a bank account (Art. 134 § 1 of the Electoral Code). The Electoral Code knows no exception to that rule, and its provisions are restrictive enough to introduce a limitation of collecting the funds only in one such account. As a result, the use in the activities of a campaign committee of a bank account is unavoidable, which makes a broader analysis of that institution legitimate in the context of local government elections, especially that the body of case-law in that area is scant. In addition, there is no comprehensive study of that issue in academic literature.

The purpose of this study is to provide, in the first place, basic knowledge about bank accounts and banks' obligations related to maintaining accounts under other statutory provisions in the context of operation of campaign committees, and about performance of control or supervisory duties by state authorities.

LEGAL BASES FOR OPENING AND RUNNING BANK ACCOUNTS IN POLAND

The subject matter of bank accounts is governed, in the first place, by the provisions of the Civil Code[4] and of the Banking Law Act[5]. Although both these legislative acts refer to bank accounts, it is necessary, in the light of their specificity, to divide them, as proposed in literature[6], into two principal groups:

1. administrative provisions,
2. civil law provisions.

The former, most generally speaking, are provisions relating to the operation of banks,

[1] Act of 5 January 2011 – Electoral Code (i.e.: Dz.U. 2019, item 684); hereinafter referred to as the Electoral Code.

[2] Regardless of the fact that it follows from the express meaning of Art. 84 § 1 of the Electoral Code, it is also accentuated in the case-law of the Supreme Administrative Court (NSA), c.f. the judgment of the NSA of 4 February 2014, file reference: II GSK 1718/12, Legalis no. 787792.

[3] C.f. provisions of Art. 125 and following of the Electoral Code.

[4] Act of 23 April 1964 – Civil Code (i.e.: Dz.U. of 2018, item 1025); hereinafter referred to as CC.

[5] Act of 29 August 1997 – Banking Law (i.e.: Dz.U. 2018, item 2187); hereinafter referred to as Banking Law Act.

[6] C.f. A. Nowacki, *Komentarz do art. 725 Kodeksu cywilnego*, [in:] K. Osajda (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2019, Legalis.

that is entities which are one (necessary) party (service provider) concluding bank account contracts. Such provisions are contained, in the first place, in the Banking Law Act[7]. The latter case (provisions of the Civil Code and the Banking Law Act), on the other hand, refers to provisions governing the legal relationship arising between the parties under the contract and the contract as such, including its parties and subject matter. Neither the CC nor the Banking Law Act provides a legal definition of a banking account. It must be emphasized that the discussed division is not dichotomous. Although the CC provisions do not contain administrative norms, the Banking Law Act contains both administrative rules and civil law rules. However, specification of the nature of specific norms does not seem appropriate from the point of view of the discussed subject matter.

There are also special provisions on banking accounts, including those of the Electoral Code relating to bank accounts of campaign committees. They have been "omitted" in the above division because of their very narrow scope of application in relation to the total of bank accounts run by banks. Nevertheless, they are going to be discussed in a further part if this study.

THE BANKING LAW ACT REGIME

At the beginning of the discussion of the Banking Law Act's regime of bank accounts, it must be emphasized that running of such accounts was considered by the legislator a banking act (Art. 5(1) of the Banking Law Act), which, in aggregate terms, is also an element of the definition of bank as introduced in Art. 2 of the Banking Law Act[8].

When it comes to special provisions of the Banking Law Act, the subject matter of bank accounts was covered by Chapter 3 entitled "Bank accounts," i.e. Arts. 49 – 62 of that Act, where the legislator, first, indicated admissible types of bank accounts and, second, specified the basic terms of their maintenance, especially the terms of disposing of the means by the holder and co-holder of a bank account, terms of conclusions and necessary elements of a bank account contract, fees and charges for the opening and maintenance of certain types of bank accounts, procedure in case of death of the account's holder and situations of expiry of the bank account contract.

In the first place, in respect of bank accounts, the Banking Law Act regulates the admissible scope of relevant activities. The addressee of those provisions are, undoubtedly, banks and they will apply during the preparation of product offers for customers, including also customer documentation. In Art. 49(1) of the Banking Law Act, the legislator lists the types of accounts that may be run by banks. The following provisions of the Banking Law Act narrow down the subjective scope of specific accounts, including settlement accounts (Art. 49(2) of the Banking Law Act). The last "group" of accounts to which the limitations provided in the Banking Law Act refer are family accounts.

[7] At this point, it must be emphasized that it is an act of fundamental importance but not the only one. In the Polish legal system, there are a number of legislative acts which also refer to the subject matter of bank accounts, either directly or indirectly.

[8] The list of banks operating in the market is kept by the Polish Financial Supervision Authority and published on the Authority's website, according to the division into admissible forms. More on the activities carried out under Art. 70(2) of the Act on trading in financial instruments, c.f. K. Majewski, *Obowiązki banków wobec klientów przewidziane w ustawie o obrocie instrumentami finansowymi*, Office of the Polish Financial Supervision Authority, Warszawa 2019, p. 12 ff.

In reference to the problems of operation of campaign committees, under the applicable legislative regime, it must be concluded that such entities may be holders of settlement accounts.

The Banking Law Act refers as well to the bank account contract. First, the Act requires that such contract be concluded in writing (Art. 52(1) of the Banking Law Act). Second, it points, in a non-exclusive catalogue, to the contract's elements.

The indicated requirements relate to all bank accounts. Those provisions do not narrow down their subjective scope, which means that they apply also to the accounts of campaign committees.

THE CIVIL CODE REGIME OF BANK ACCOUNTS

In the Civil Code, the subject matter of bank accounts is covered by the provisions of Arts. 725-733, contained in Title XX, entitled by the legislator: "Bank account contract." In relation to the regime of the Banking Law Act, it must be emphasized that the rules of the Civil Code specify only a rudimentary regime of the subject matter.

In the first place, the CC provides, in Art. 725, for a definition of the bank account contract, specifying that by a bank account contract, a bank commits to a bank account holder, for a definite or an indefinite term, to keep his cash and, if the contract so provides, to carry out, on his instructions, money settlements. As a result, the Civil Code specifies the two principal roles of bank accounts, wherein one of such roles, according to the legislator's intention, seems to be of key importance. This means that keeping cash is the essence of running such account, which follows expressly from the statutory provision (Art. 725 CC), and, consequently, may not be omitted. On the other hand, the carrying out of money settlements is left by the Civil Code to the agreement between the parties, as an activity which may be carried out only when the contract so provides, that is when such is the intention (need) of both parties.

The other provisions of the CC concentrate mostly on imposing responsibilities on banks. The provisions requiring wider attention is Art. 730 CC, governing the terms of terminating bank account contracts. The first part of that provision assumes the equality of parties to such contracts, by providing that a bank account contract concluded for an indefinite term may be terminated at any time through notice given by any party. However, its second part introduces an essential limitation from the point of view of banking practice. The limitation consists in restricting the bank's freedom to terminate bank account contracts only to situations when there are "important reasons" for such termination (according to the literal wording of Art. 730 CC, banks may terminate such contracts only for important reasons). As a result, the service recipient (bank's customer) may freely use the right to terminate the bank account contract, including exercise it at any time without giving any reasons. On the other hand, such discretion was not left by the legislator to banks. Against the background of such legislative framework, A. Nowacki justly argues that "also the bank account contract or bank regulations may not restrict the possibility of a bank account contract being terminated by the account's holder, even to situations of important reasons"[9]. The term "account's holder" used by that author is synonymous with the previously used terms "service recipient" or "bank's custom-

[9] C.f. A. Nowacki, *Komentarz do art. 730 Kodeksu cywilnego*, [in:] K. Osajda (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2019, Legalis.

er." The legislator specified in a completely different way the legal situation of the contracting parties in case of contracts concluded for a definite term (the expression "such contract" was used in relation to a contract concluded for an indefinite term). In the light of the content of Art. 730 CC, the above comments are irrelevant to such situations and, in consequence, the parties may specify the relevant scope differently in the contract[10]. However, one should bear in mind the Banking Law Act, which lays down the circumstances in which a bank account contract is terminated by operation of law. When it comes to the abovementioned practical difficulties, they relate, in the first place, to the expression "for important reasons", as used by the legislator in Art. 730 CC. In academic literature, it is indicated that those may be both circumstances attributable to the service recipient – account's holder (no transactions on the account, expiry of the economic purpose for which the bank account was opened, gross violation by the account's holder of the contract's provisions) and circumstances attributable to the bank (change of the statutory scope of operation)[11]. On the other hand, judicial practice points to the need to clarify that question in the contract between the parties when one of them is a consumer. In the opinion of the Court of Competition and Consumer Protection (SOKiK), the use in consumer transactions of general terms and conditions containing the following contractual clause: "Termination of a bank account upon a prior 30-day notice period may be effected by (…) the Bank for important reasons, and in particular (…)", that is introduction of an open catalogue of such reasons, meets the criteria of an unfair contract term as laid down in Art. 385(3) item 9 CC, since it affords to the bank a possibility to give the contract's binding interpretation. Under such provision, according to SOKiK, the bank could terminate a bank account contract also for reasons (which the bank considers important) other than the ones expressly named in the contract and, as a consequence, a consumer would be in a position of "unjustified uncertainty about the permanence of the legal relationship to which he is a party, and about the circumstances which form the basis of the Bank's termination of the contract"[12]. As a result, the case-law indicates that the provision of Art. 730 CC not only limits the possibility of the Bank's termination of the contract but also the adequate formulation of the standard agreement used to conclude legal relationships with consumer customers. However, this will not relate to campaign committees on whose behalf bank accounts are maintained. The definition of consumer in the Polish legal system was introduced in the Civil Code. Under Art. 22^1 CC, consumer is any natural person performing a legal act with an entrepreneur which is not directly related to his business or professional activity. Although the legal form of a campaign committee has not been specified in legislation, which may raise doubts, most certainly it is not a natural person. In consequence, campaign committees are not consumers in the understanding of Art. 22^1 CC.

However, it must be remembered that the requirement under Art. 730 CC will also refer to campaign committees. The legislator did not introduce in that provision any subjective limitation, which means that it applies to all subjects that may be a party to bank account contracts.

[10] Ibidem
[11] C.f. A. Janik, *Komentarz do art. 730 Kodeksu cywilnego*, [in:] M. Gutowski (ed.), *Kodeks cywilny. Komentarz*, tom III, Warszawa 2019, Legalis.
[12] C.f. judgment of the SOKiK of 22 February 2012, file reference XVII AmC 3530/10, Legalis no. 745004.

THE RELATION BETWEEN THE BANKING LAW ACT AND THE CIVIL CODE

As follows from the abovementioned considerations, provisions of the Banking Law Act and of the Civil Code govern the same areas. Although, due to the scope of those legislative acts, there will be rather no conflicts between their provisions, such conflicts are not excluded from the theoretical point of view. In the same way, it seems legitimate to specify the mutual relation between those regimes and to decide which of the legislative acts is to apply in case of a conflict between the legal norms encapsulated in their provisions. This question is resolved by general conflict rules. The use of those rules leads to the conclusion that – in largely simplified terms – "the priority of application" will be afforded to the provisions of the Baking Law Act.

First, the Banking Law Act was introduced in 1997, whereas the Civil Code dates back to 1964. As a consequence, under the principle *lex posterior derogat legi priori,* the Banking Law Act will apply in case of conflicts of its provisions with the CC. Second, the Banking Law Act contains provisions which are of fundamental and principal importance to banking activities and, in effect, are special provisions in relation to the Civil Code in the field of banking activities, understood as performance of banking acts, among which one can list the running of bank accounts. In the light of the above, under the principle *lex specialis derogat legi generali,* the Baking Law Act will apply in case of conflicts between its provisions and those of the CC.

However, it must be noted that the above conclusions refer only to situations of conflicts between specific norms. In the absence of such conflict, both the legislative acts will apply (they apply at the same time).

THE ELECTORAL CODE REGIME IN RESPECT OF BANK ACCOUNTS

In the Electoral Code, the provisions on bank accounts of campaign committees, including the committees taking part in local government elections, were placed in Chapter 15. "Financing of election campaigns", which, as such, points to the use of that institution in the electoral system. Because of the essence of those provisions and the intended use of the entities to whose operation this study is devoted, it is of no surprise that bank accounts are an instrument for which specific purposes are set. At the beginning of the discussion of that legal regime, it must be emphasized that the person responsible for financial management of a campaign committee is the financial agent. This person also handles such management (Art. 127 § 1 of the Electoral Code) and incurs liability for the financial obligations of the campaign committee (Art. 130 § 1 of the Electoral Code), which liability extends as well to the obligations to settle financial gains received by the committee in violation of the provisions of the Electoral Code (Art. 130 § 4 of the Electoral Code). These circumstances are of key importance not only from the point of view of expending the funds deposited in the bank account and, broadly speaking in connection with the bank account's use, but also for the determination of the bank's responsibilities in the area of anti-money laundering and combating terrorist financing.

Other important provisions in this regard are the ones regulating the terms of making payments to the bank account. Since it was assumed, in Art. 134 § 6 of the Electoral Code, that a bank account contract concluded on behalf of a campaign committee must contain a stipulation about the method of making payments to the Committee, as laid down in the discussed Code, and about the admissible source of acquiring financial means by the committee, and about the admissible deadline for such payments, those terms (of making payments) should be of interest both to the financial agent of a campaign committee, as the person responsible for the committee's financial management, and to the bank, as an entity which, first, is a party to the contract and, second, is the service provider responsible for the appropriate and legal rendition of services to its customers (campaign committees in this case).

The rules on making payments refer as well to their admissible methods. Under Art. 134 § 5 of the Electoral Code, financial means contributed to campaign committees may be paid only by clearance cheques, transfers or payment cards.

Cheque is a legal institution known to the Polish legislation already in the 30's of the XX century. It was devoted a statutory regime – the Cheque Law Act.[13] A clearance cheque, mentioned in Art. 134 § 5 of the Electoral Code is one of forms of a cheque – document being a security paper, used to dispose of the drawer's assets, i.e. a cheque which, beside the general requirements, must meet additional specific statutory criteria. At the beginning of considerations in this regard, cheques as such should be considered.

In its "principal" form, under Art. 3 of the Cheque Law Act, a cheque is made out to the banker (in the current market situation and under the currently applicable legislation this will be a bank) holding the funds (means) to realize the drawer's disposition, under an express or implied contract, entitling the cheque's drawer to dispose of the funds with a cheque. The Cheque Law Act points to elements which, in general[14], should be contained in a document to make it a cheque (Art. 1 of the Cheque Law Act).

On the other hand, the essence of a clearance cheque, understood as a specific type of cheque[15], as laid down in Art. 39 of the Cheque Law Act, is exclusion of cash as the method of payment. In other words, the issue of a clearance cheque is intended for accounting settlements consisting in crediting bank accounts, clearance or deduction, that is for cashless settlements with a bank's involvement[16]. Issuance of a clearance cheque consists in the placement across its front page of the stipulation "transfer to the account" or another equivalent expression, and erasure of such stipulation is considered void (Art. 39 of the Cheque Law Act). It is accepted in literature that the purpose of introducing the institution of clearance account was to "mitigate the danger of loss of a cheque (theft, loss) and to prevent forgery or payment of the check sum to a substantively unauthorized person"[17].

The institution of clearance cheque is also governed by the Banking Law Act. This statutory framework focuses on the specification of the terms of settlements with the use of clearance

[13] Act of 28 April 1936 – Cheque Law (Dz.U. No. 37, item 283, as amended; hereinafter referred to as "Cheque Law Act").
[14] The Cheque Law Act provides for situations in which, despite the lack of those elements, a document will still be a cheque in the understanding of the Act. C.f. in this regard, the first sentence of Art. 2 of the Cheque Law Act.
[15] C.f. judgment of the Supreme Court of 22 February 1991, file reference: III CRN 499/90, Legalis no. 27253.
[16] C.f. M. Czarnecki, L. Bagińska, *Prawo czekowe. Komentarz do art. 39*, Warszawa 2018, Legalis.
[17] Ibidem.

cheques and not on the document itself constituting a cheque of such type, as was the case in the Cheque Law Act. Under Art. 63e(1) of the Banking Law Act, a clearance cheque is a disposition of the cheque's drawer addressed to the drawee to debit the drawer's account with the amount for which the cheque was made out, and to credit the account of the cheque's holder with the same amount. The following provisions of the Banking Law Act specify the terms of confirming clearance cheques and securing the means on bank accounts with a view to its processing.

Payment card was defined in the Act of 19 August 2011 on payment services[18]. Under Art. 2(15a) APS, it is a card entitling to withdraw cash or enabling the placement of a payment order through an acceptor or billing agent, accepted by the acceptor with a view to receiving the funds owed to the acceptor, including payment card in the understanding of Art. 2(15) of the Regulation (UE) 2015/751[19], that is a payment instrument enabling payers to initiate transactions with a debit or credit card (Art. 2 item 15 of that Regulation). As in the case of clearance cheque, payment card was also taken into account in the provisions of the Banking Law Act. In conceptual terms, the Banking Law Act refers to the definition adopted in the Act on payment services (Art. 4(1) item 4 of the Banking Law Act). When it comes to other provisions of the Banking Law Act, payment cards are mentioned in the rules on monetary settlements made through banks. In particular, the Banking Law Act specifies that transactions with the use of payment cards are cashless settlements (Art. 63(3) item 4 of the Baking Law Act), taking place on the terms specified in contracts concluded by banks with their customers (Art. 63f of the Banking Law Act). As regards the rights and obligations of issuers and holders of payment cards, the Banking Law Act refers to separate statutory provisions, which (in principle) will be the APS.

Transfer, mentioned in Art. 134 § 5 of the Electoral Code, was regulated in the Banking Law Act so that, beside the payment card, it is a method of cashless settlement (Art. 63(3) item 1 of the Banking Law Act). On the other hand, transfer order, under Art. 63c of the Banking Law Act, is an instruction given to the bank by the debtor to debit the debtor's account with a specific amount and to credit the same amount to the creditor's account. The bank executes the debtor's instruction in a manner specified in the bank account contract. Taking into consideration that Art. 134 § 5 of the Electoral Code defines the admissible methods of payment to the bank account of a campaign committee, such committee will be the debtor in the understanding of Art. 63c of the Banking Law Act.

The analysis of the above provisions leads to the conclusion that the reason for adopting in Art. 134 § 5 of the Electoral Code the solution permitting only payments in the form of clearance cheque, transfer or payment card, was to register both parties to the transaction, which facilitates electoral bodies to comply with their statutory obligations, including control and supervisory ones. In addition, this solution implements the assumptions and purposes following from other provisions, including the regime of anti-money laundering and combatting terrorist financing, as well as of the abovementioned PSD2 Directive.

[18] I.e.: Dz.U. 2019, item 659; hereinafter referred to as "APS." Recently this Act was thoroughly amended. The purpose of the amendments was to implement the so called PSD2 Directive, that is the Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC. The essence of the reforms was to increase the safety of transactions.

[19] Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

OTHER BANK DUTIES – AML OBLIGATIONS

The subject matter of running bank accounts for campaign committees taking part in local government elections involves also other legislative acts than the Banking Law Act, the Electoral Code and the Civil Code. Much significance will definitely attach to the abovementioned provisions on anti-money laundering and combatting terrorist financing, that is the Act of 1 March 2018 on counteracting money laundering and terrorist financing[20] and legislation implementing that Act.

Under Art. 2(1) item 1 of the AML Act, national banks and foreign bank branches are obliged entities in the understanding of that Act, which means that they are obligated to comply with the requirements under the AML Act in the area of counteracting money laundering and terrorist financing, including predominantly – in most general terms – to apply the financial safeguards mentioned in Chapter 5 of the AML Act, i.e. in Art. 33 and following of that Act. On the other hand, the obligation to apply such safeguards follows directly from Art. 33(1) of the AML Act. The application of financial safeguards, from the subjective perspective, relates to customers and their actual beneficiaries and, from the objective perspective, to the abovementioned economic relations of the customer, including the analysis of transactions made by the customer and the sources of the customer's financial means.

As in the case of economic relations and incidental transactions, the AML Act defines the concept of customer and actual beneficiary. Under Art. 2(2) item 10 of the AML Act, customer is a natural person, legal person or organizational unit without legal personality, to whom the obliged entity (including banks, as concluded above) provides services or on whose behalf the obliged entity performs acts falling within the scope of its professional activity, with whom the entity establishes economic relations (under Art. 2(2) item 20 of the AML Act, the relations must be permanent), or upon whose instruction the entity executes an incidental transaction. As follows from the adduced legislative framework, the terminology adopted in the AML Act is consistent.

The definition of actual beneficiary is the most extensive of all the definitions discussed so far. The justification for the adoption of such solution is the need to cover by the said definition the widest possible scope.

As follows from the discussed legislative framework, including, most importantly, the definitions of customer, actual beneficiary and the institution of financial safeguards based on those concepts, to establish if there is a legal obligation to apply such safeguards in relation to a given entity, it is necessary to determine the status of the entity. The status of a campaign committee raises doubts both in the doctrine and in judicial practice. However, it is consequently argued that:

1) campaign committees are organizational units created to carry out specific tasks[21],
2) campaign committees have no legal personality[22],

[20] Dz.U. 2020, item 971, as amended; hereinafter referred to as the "AML Act." In principle, the ADM Act entered into force on 13 July 2018.

[21] C.f. judgment of the Supreme Administrative Court of 4 February 2014, file reference: II GSK 1718/12, Legalis no. 787792.

[22] C.f. judgment of the Court of Appeal in Łódź of 19 October 2018, file reference: I ACz 1849/18, Legalis no. 1861335; c.f. also M. Czakowska, P. Raźny, *Konstrukcja prawna komitetu wyborczego w kontekście zasady równych szans wyborczych*, Studia Biura Analiz Sejmowych 3(27), p. 79.

3) campaign committees have no legal capacity[23].

In the same way, campaign committees are entities of an untypical legal status and, consequently, entities difficult to locate in the economic system. However, this does not translate into the subject matter of counteracting money laundering and terrorist financing. Since, in the understanding of Art. 2(2) item 10 of the AML Act, customer is a natural person, legal person or organizational unit without legal personality, it does not matter whether or not a campaign committee has legal personality and/or legal capacity. Moreover, in the definition of customer the focus was on what "relates" to the obliged entity – its activities rendered to a given subject in the form of providing services or performing acts falling within the scope of that subject's professional activities, including the establishment of economic relations or effecting an incidental transaction. Running of a bank account on behalf of a campaign committee undoubtedly amounts to provision of services to that committee and is connected with the activities pursued by the bank (banking activity in the understanding of the Banking Law Provisions). It must be emphasized that although the cooperation between the committee and the bank is temporary, as follows from the very nature of the committee, the economic relations holding between those entities exhibit the feature of permanence, especially at the time of their establishment. In the same way, in the context of so-formulated definitions of customer and economic relations, campaign committees will be the bank's customers in the understanding of the provisions of the AML Act and, in turn, financial safeguards will apply to such entities[24].

Verification of identity of a customer or actual beneficiary, in general, takes place prior to the establishment of economic relations or effecting an incidental transaction (Art. 39(1) of the AML Act), and, upon fulfilment of statutory requirements, it may be concluded at the time of establishing economic relations. As a consequence, the first obligations in the area of counteracting money laundering and terrorist financing should be complied with already prior to the conclusion of the bank account contract with a campaign committee.

SUMMARY

Campaign committees, including the ones operating in the local government elections of 2018 were obligated by the provisions of the Electoral Code to use the services of banks in respect of maintaining bank accounts. This cooperation took part on strictly defined terms. The basic rules regulating such terms are the provisions of the Banking Law Act and of the Civil Code. However, other provisions will also apply, including particularly the norms of

[23] C.f. M. Czakowska, P. Raźny, *Konstrukcja prawna…*, p. 80-81; The authors point out that "The Electoral Code *does not grant legal personality to committees, neither expressly nor by giving them the features of a civil law subject. The lack of legal personality is also confirmed by the lack of any provisions expressly granting them with the capacity to sue or to incur obligations,*" which in the authors' opinion results in the fact that a *"Campaign committee plays, in the first place, the role of an entity operating within the administrative relations of the electoral process, and there are no reasons to distinguish its assets or, all the more, to grant it with independent personality within the framework of civil law and civil procedure. It follows from the above that campaign committees should not only be denied the status of legal person but also that of an imperfect legal person.*"

[24] The definitions adopted in the AML Act implement the purpose of that statutory regime – so that the regime covers the widest possible range of entities and the largest possible number of situations, and the counteracting of money laundering and terrorist financing is deployed to the widest possible extent.

the AML Act. On the whole, from the point of view of control and supervision, their due and scrupulous application by banks, although effected for a different purpose, will be most significant of all the legislative acts mentioned above. This is the case since the AML Act's provisions introduce not only the need to identify the customer, verify the customer's identity and identify the actual beneficiary but also the duty of current monitoring of the bank account activities in the context of counteracting money laundering and terrorist financing. The activities undertaken by banks as obliged entities extend also to areas other than mere operation of the campaign committee (persons authorized to act on the committee's behalf). The result of such monitoring may be notification of appropriate state authorities. Those circumstances are essential both for the control of proper operation of a campaign committee within the electoral system, which is a matter of concern to electoral authorities, and for the safety of the entire economic system. As a result, this subject matter should be an area of interest to electoral bodies and persons substantially involved in the operation of a campaign committee, including, in particular, the committee's financial agent.

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