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Family foundations in Poland. Part I

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Abstract

Issues related to foundations are currently binding, not only in the government of lawyers, but also economists, sociologists or individuals. The growing effects of foundations cause effects with the enormous significance of these activities and their visible development in activities and their regulated, which undoubtedly and realistically cause the implementation of basic values, such as: protection of borders, protection of fundamental human rights, scientific and technical progress, social and economic development, elimination of discrimination and equalization of all disproportions between individuals, regions or the state. It is also indicated that the essence of foundations can be protection with the recipients in mind. This goal was created by creating a legal scope of possibilities of establishing in the Polish system of distribution of family funds, the essence of which is analyzed by Michał Mólka in the article Family foundations in Poland. Part II. Without the existence of a legal basis for the existence of family funds in the Polish system of obligation, there was not only a long wait, but also answers to questions about the owners of family owners.creation.

Keywords: family foundations in Poland, foundations, family funds, new foundations in Poland, family assets, public foundations, private foundations, second sector, third sector

Introduction

In this context, it is worth considering the statement made by Jędrzej Figurski, which indicates that "currently the most popular tools in the world used to protect supervision with generations in mind are private (family) foundations and trusts. Both institutions with equivalent sources (and consequently from the legal source in which they originate - the main source of Roman law is customary

law) can be used to spread a protective umbrella over property and its management in a manner specified by the person after explaining it to life¹". This was the intention of the Polish

¹ J. Figurski [w:] *Fundacja rodzinna. Aspekty prawne i podatkowe. Komentarz*, red. P. Tomczykowski, Warszawa 2023, s. 1.

legislator. As Jolanta Blicharz points out: "a foundation is a correct institution with regulatory settings. Its existence is justified by law, maintained from the moment it is funded, e.g. by a foundation act (i.e. private law support of the founder's will) or by statute (civil law foundation)²". The author notes that there are funds on the ground that have an impact on the political system, because "the norms of foundation law in individual cases are determined by the solution that was sent to political, political and economic institutions³". In addition, historical data are also available⁴. In the latter, Ewa Kulik-Bielińska and Piotr Frączak point out that "the institution of foundations is largely shaped by local traditions, apart from the distinction between countries (...). With the comments on the violence of both the Catholic Church and the nobility in the period of pre-partition Poland, and then the tradition influencing the period of partitions, in the 20th century foundations of a class (religious and national) nature dominated in Poland⁵". This tendency is also noticeable in other countries of contemporary Europe, where the genesis of the foundation is primarily connected with the functioning and role of the Catholic Church. The process subject to Polish foundation law, as Jolanta Blicharz threatens, which will take place after Poland regains independence, while on the territory of the country there were units subject to the territorial division of the state⁶. Polish woman available for over 123 years after the partitions of neighboring countries, i.e. Russian, German and geographical, whose legal system was incorporated into the territory of the Polish state. A detailed historical drawing was not introduced, which should be indicated that by the decree of the Council of Ministers provided by the Council of State of 24.04.1952⁷, all pre-war funds were liquidated, and the foundation's assets, which are available in the country, were nationalized for over 30 years, when the possibility of establishing a foundation in Poland was restored. The Polish legislator did not decide to create a legal publication of the "foundation". According to the Dictionary of Foreign Words, the term "foundation" means "donation, construction at one's own expense for public use⁸". As Magdalena Arczewska takes into account, after justifying herself on the basis of defining the word "fundatio", it is "the foundation of social activities, considered for the good of the community⁹".

Attempts to define this concept are the concept of science, the indicator, among other things, that a foundation can be defined as "an organizational unit of the company type, transferred in the attribute of legal personality, created on the initiative of legal persons, which are legal persons to be implemented in the way of reasoning and on the basis of conclusions resulting from the

² J. Blicharz, *Fundacje. Wybrane zagadnienia*, Wrocław 2016, s. 13.

³ J. Blicharz, *Fundacje...*, s. 13

⁴ J. Blicharz, *Fundacje...*, s. 13

⁵ E. Kulik-Bielińska, P. Frączak, *Instytucja fundacji w Polsce [w:] Rola i modele fundacji w Polsce i w Europie*, red. M. Arczewska, Warszawa 2009, s. 17.

⁶ J. Blicharz, *Fundacje...*, s. 17.

⁷ Decree of April 24, 1952 on the abolition of the foundation (Journal of Laws No. 25, item 172).

⁸ *Słownik wyrazów obcych*, Warszawa 1971, s. 290

⁹ M. Arczewska, *Wprowadzenie do książki „Rola i modele fundacji w Polsce i w Europie” [w:] Rola i modele fundacji w Polsce i w Europie*, red. M. Arczewska, Warszawa 2009, s. 9.

discussed in the act on the use of the foundation "public"¹⁰. Other definitions come to the recognition that a foundation is "personified possessor by the founder for appropriate purposes¹¹" or "property allocated by the founder under the foundation act and intended for the implementation of the purpose of control¹²". There is no doubt that the concept of a foundation should be understood primarily as a separate property by the founder, which is transferred to the foundation's activities, and these purposes should be primarily of a public nature.

In addition to the Polish judiciary, an attempt was made to characterize (define) the term "foundation". The definitions that a foundation is formally a personified property, the purpose of which (the method of connection) is determined by the will of the founder expressed in the statute¹³, having shares and intended for implementation, which constitute the same interests, the Republic of Poland, the concepts of socially or economically used¹⁴, constitutive foundations are their functions, purposes and rights - links these elements with publicly available information in the foundation deed. Recognized that each registered foundation under the 1984¹⁵ Act has the character of a user, it may have the significance of an unspecified group of destinations, and the secondary significance is the source of its origin, delegation - the sum of the effects of the occurrence, since the moment the foundation is identified, the connection between the founder and the foundation is severed¹⁶. Recognition of the principal recognition of the foundation constitutes a specific, legally separated member property, which as a legal person is brought into being by the so-called foundation deed, contains a declaration of will of the person expressed in the form of a notarial deed, which contains the founder's data intended for specified purposes, e.g. scientific, cultural, charitable¹⁷. However, the Court of Appeal in Warsaw found that the foundation is not related to the associating member, but the subject of law includes external action for the benefit of destinations who are not members of the organizational organization of the foundation¹⁸. In light of the data presented, there is no doubt that foundations are "two" very used, available

¹⁰ H. Cioch, *Prawo fundacyjne*, Warszawa 2011, s. 30

¹¹ A. Ogonowski, A. Gibalska, *Fundacje i stowarzyszenia. Funkcjonowanie i opodatkowanie 2014*, Kraków 2014, s. 10; U. Staśkiewicz, *Rola organizacji pozarządowych w Polsce w zaspokajaniu potrzeb społecznych*, „Obronność – Zeszyty Naukowe Wydziału Zarządzania i Dowodzenia Akademii Sztuki Wojennej” 2017/3 (23), s. 162–184.

¹² J. Broł, *Fundacje (po zmianach ustawodawczych)*, Bydgoszcz 1992, s. 69.

¹³ Uchwała Sądu Najwyższego (SN) z 7.07.1993 r., III CZP 88/93, LEX nr 3951.

¹⁴ Uchwała SN (7) z 13.03.2002 r., III ZP 21/01, LEX nr 51695.

¹⁵ Ustawa z 6.04.1984 r. o fundacjach (Dz.U. z 2023 r. poz. 166).

¹⁶ Uchwała SN (7) z 31.03.1998 r., III ZP 44/97, 472, LEX nr 33082.

¹⁷ Postanowienie Naczelnego Sądu Administracyjnego (NSA) w Warszawie z 12.01.1993 r., I SA 1762/92, LEX nr 10373; wyrok NSA w Poznaniu z 10.02.1994 r., SA/Po 3045/9, LEX nr 9361; wyrok NSA w Warszawie z 21.12.2001 r., I SA 786/00, LEX nr 653999

¹⁸ 18 Wyrok Sądu Apelacyjnego (SA) w Warszawie z 5.08.1998 r., I ACa 500/98, LEX nr 36283.

for their existence is the operational purpose by the founder and the purpose intended by him, which is used to achieve the purpose. Currently, it is difficult to imagine the application of many scientific, cultural and other purposes without the activity of foundations.

Foundations are released heterogeneous character, primarily with the attention to the fact that they can be established in different modes (foundations: public law, private law), by different foundations (foundations: secular, church, corporate, non-corporate), they can also have different goals (foundations: socially useful, foundations made economically available), different users (foundations: made public, launched), they can have the status of a public benefit organization (foundations with the status of an OPP or without the status of an OPP), they can, what cannot be launched, to start the activity (foundations): possibility of operation, not conducting economic activity), can have a scope in the country or abroad (foundations: legal, foreign), can have a different scope (foundations: local, administrative, regional, international)¹⁹. Foundations can also be used on the foundation used, e.g. schools, and projects that are the basis for the implementation of tasks. All these divisions that we actually have to apply to entities with non-uniform division, which are difficult to include in a standardized framework, which can be determined by the lack of a legal definition of the concept of "foundation". The above definition in terms of the methods of creating foundations or the purposes for which comments are called, which are related, that society is covered by the functioning of such entities, and their activities are carried out.

After the entry into force of the Polish Act of 1984 on foundations, one of the most common, as a substitute, was created: associations (for a foundation causing: simple registration, no derived number of members, controller of founders), companies (establishing a foundation was required to start a business activity independent of the authorities, e.g. Lublin Development Foundation), foundations (foundations were established that were developed on the basis of social activities specified in the statute, e.g. Friends of the Children's Hospital Foundation at Litewska Street), foundations of the original traditional meaning (foundations were established that were set a goal and endowed with holders, e.g. Zakłady Kórnickie Foundation), new types of foundations (difficult to classify, but above all all public collection organizations, e.g. Polish Humanitarian Action, Great Orchestra of Christmas Charity)²⁰. Data published by the Central Statistical Office in 2022. There are over 103 thousand foundations operating in Poland, which had a total of over 8.3 members.

A popular form of implementing socially useful goals are civil rights foundations. The concept of "public law foundations" was formulated in Polish science before the Second World War. They were then treated as intended for public law acts for public resources made available by users²¹. Jolanta Blicharz notes that there are two separate foundations. First, these were state foundations - the founder was the state, which by statute separated the material substrate from legal charges and covering it for the purpose and decided on the personal substrate, exerting influence on the staffing. The first such foundation was the Kościuszko

Village Foundation established in 1929. The second are other foundations established by statutory acts, but related to private individuals and their activities, an example of which is the Zamoyski Foundation established by the Act of 30.07.1925²² under the name of Zakłady Kórnickie²³. Radosław Mędrzycki indicates what elements differentiate copyright funds from private law foundations, and these primarily include "the statutory source of foundation law, the method of establishing a foundation, the concept of interest from which the foundation's objectives originate"²⁴.

Act on Foundations of 1984. The possibility of creating a foundation in addition to a foundation is also available under the foundation law. This status is held by foundations whose structures and tasks are specified by the issuance of the act, and therefore primarily the Act of 5 January 1995 on the Ossoliński National Institute Foundation²⁵, the Act of 20 February 1997 on the Public Opinion Research Centre Foundation²⁶, the Act of 18 September 2001 on the Kórnickie Institute Foundation²⁷. are the most important civil law foundations. Without entering into detailed considerations, it should be pointed out that the Ossoliński National Institute Foundation is primarily concerned with: maintaining the Ossolineum National Library and increasing its scientific, publishing, final and scientific and research work, including maintaining and increasing the assets of Polish culture, apart from manuscripts, cartography and art. It is the successor of the foundation established by Józef Ossoliński. The Public Opinion Research Center Foundation has as its basic goal: public opinion research on the use of research, inspiring, organizing and practicing public opinion research, developing and making public opinion data available, reporting to society knowledge about the state and trends of changes in public opinions. Instead, the Kórnickie Institute Foundation aims to support and develop modern access through primarily revealing agricultural culture, acting for agricultural education and scientific and research activities by introducing agricultural schools, associated with the Polish Academy of Sciences - the Kórnickie Library and the Institute of Dendrology. This type of foundation also includes the Foundation for Polish-German Reconciliation established on 16.10.1991 under an agreement between the governments of the Republic of Poland and Germany²⁸. On the basis of this government agreement, the German 500 members of the German marks in order to help primarily victims of Nazi persecution, former prisoners of concentration camps and forced laborers of the Third Reich. The edition of the foundation of civil law is the Foundation of the Future Industry Platform established under the

²² Ustawa z 30.07.1925 r. o Zakładach Kórnickich (Dz.U. Nr 86, poz. 592).

²³ J. Blicharz, *Fundacje...*, s. 19.

²⁴ R. Mędrzycki, *Fundacje prawa publicznego w świetle dorobku naukowego Tadeusza Bigi*, „Acta Universitatis Wratislaviensis” No 4058, Prawo 333, Wrocław 2021, s. 350.

²⁵ Ustawa z 5.01.1995 r. o fundacji – Zakład Narodowy imienia Ossolińskich (Dz.U. z 2017 r. poz. 1881).

²⁶ Ustawa z 20.02.1997 r. o fundacji – Centrum Badania Opinii Społecznej (Dz.U. Nr 30 poz. 163).

²⁷ Ustawa z 18.09.2001 r. o fundacji – Zakłady Kórnickie (Dz.U. z 2020 r. poz. 1705).

²⁸ E. Ura, *Prawo administracyjne*, Warszawa 2010, s. 236.

¹⁹ E. Kulik-Bielińska, P. Frączak, *Instytucja fundacji...*, s. 20.

²⁰ E. Kulik-Bielińska, P. Frączak, *Instytucja fundacji...*, s. 19.

²¹ J. Blicharz, *Fundacje...*, s. 18–19.

Act of 2019²⁹, the key to the goal: strengthening and competitiveness of the enterprise, supported by a digital relay, launching original products and services, strengthening personnel security.

As Małgorzata Stahl points out: "The tasks of regulatory foundations, which are particularly located in public utility buildings, encompassed in general tasks in the acts on foundations (constituting the implementation of socially or economically useful assumptions, included in the binding interests of the Republic of Poland, in the case of such as: health protection, development of the economy and science, education and education, culture and art, social care and assistance, protection of the environment and monuments). these attributes - specified by law, basic acts on public tasks, constituting state supervision - establish their public law character³⁰". Without legal knowledge regarding the possibility of establishing this type of foundation, one should take into account very open. Private law foundations, popularly known as private foundations, have their roots in Roman law. As it results from the literature: "the first private foundations date back to the turn of the 1st and 2nd centuries and were primarily a result of cultivating the memory of the deceased through consequences of this type, the purpose of which was to prevent the deceased from being forgotten. At that time, there were also foundations that pursued social goals, such as alimony foundations, child support foundations or artistic patronage. After the premature necessity to take action from an independent foundation and their legal presence, it should be noted that private foundations are currently present in many jurisdictions, which are both European and non-European. Apart from Liechtenstein, private foundations operate, among others, in such cases as: Austria, the Czech Republic, the Netherlands, Malta, Germany, Panama, Switzerland and Hungary. As indicated by Jolanta Blicharz, "one of the responses of public administration to the phenomenon of globalization is the inclusion of non-governmental institutions (e.g. private law foundations) in the implementation of public tasks. The economic advantage of these institutions in performing some public services is specialization, low costs - thanks to the work of volunteers and intelligent support from donors."

The basis for the creation of a foundation is the current act on foundations, which has been indicated by the four basic functions of a foundation, which are: the purpose of its establishment (social or economically useful, which includes: health care, development of the economy and science, education and upbringing, culture and art, social care and assistance, environmental protection, care of monuments), the founder (both a natural person by citizenship and place of residence, and a legal person with a registered office in Poland and abroad), copyright holders (the foundation is entered in the National Court Register), fulfillment (by defining the scope and objectives of the activities of the minister and the relevant starost)³¹. Private law foundations without deductions constitute a component of a non-governmental organization. According to the definition of a non-governmental organization, developed in art. 3 sec. 2 of the Act of 24 April 2003 on Public Benefit and Volunteer

²⁹ Ustawa z 17.01.2019 r. o Fundacji Platforma Przemysłu Przyszłości (Dz.U. z 2023 r. poz. 489).

³⁰ M. Stahl, *Inne podmioty administrujące* [w:] *System Prawa Administracyjnego*, t. 6, *Podmioty administrujące*, Warszawa 2011, s. 519.

³¹ J. Figurski [w:] *Fundacja rodzinna...*, s. 3.

Work, the basic element, with characteristic features of these entities.

Which should be described by Jolanta Blicharz, include: "the form of a separate organizational entity, their outside the unit belonging to the public finance sector, non-profit nature, and the purpose of the activity³²". A phenomenon not only in Poland but also worldwide is the Great Orchestra of Christmas Charity Foundation run by Jerzy Owsiak, security in 1993, which annually celebrates records of immediate collections all over the world. In 2024, the Orchestra collected over PLN 281,879,118 and with its activities are a phenomenon in the world. In view of the existence in the current applicable provision regarding two groups of foundations - separate and social - the question arises, whether the principles were introduced as an additional type of foundation, what is a family foundation, and the regulated principles regarding its functioning in the existing acts?

Referring to the existence of foundations in the current scope, i.e. introduced on the basis of the foundation act, and in another case to the registration on public and private foundations, which can be taken into account, that effective these foundations affect your goals, differ. The growing number of funds, including in many cases, which are created by the non-existence of a benefit organization, which causes that there is a need for civic action, which causes a foundation. The adoption of the family foundation act - as a binding legal act is available in full. The purpose of these foundations is reported from the main foundation on the basis of the foundation act and cannot be their subject for the threatening third sector. Due to the short period of validity of the act, it is currently difficult to submit applications for lege ferenda.

It is verified and tested by time, whether foundations are included in an equally important way as private foundations regulated in the Act on Foundations, and what practical problems arise as a result of not only their creation, but also their application. Practices of other European countries, which have been binding on family funds for years, which use very significant importance, and their number from year to year of use. They are also entities created only by countries whose legal system has created their possibility of creation, but also by foreigners who are members of family foundations outside their own country. makes the Polish legislator recognize the necessity of issuing the law for the use of family foundations in Poland, providing a legal basis for their creation.

³² J. Blicharz, *Fundacje prawa prywatnego* [w:] *Administracja. Prawo administracyjne. Część ogólna*, red. J. Blicharz, L. Zacharko, Katowice 2018, s. 27.