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## **THE “THIRD” SECTOR OF POLAND: KEY PRINCIPLES OF FUNCTIONING**

The article studies the key principles of the “third” sector’s functioning in Poland. The forms of self organization of the Polish civil society on the example of organizations and foundations have been analyzed. Through analyzing the Law of Poland of April 6, 1984 “On Foundations” and the Law of Poland of April 7 1989 “On Associations” the legal basis for the “third” sector’s functioning have been studied. Using the results of the studies a comparative analysis of the organizational peculiarities of the “third” sector in such EU countries as France, Netherlands and Germany has been carried out. In the course of the study the attention is paid to an important element of organizations’ and foundations’ studies, i.e. the statute where the founder determines the name of the organization, its location and assets, aims, principles, forms and sphere of activity, composition and management principles, appointing mechanisms, duties and competences of the body and its members.

**Key words:** organization, foundation, registration, legislation, structure, statute, the European Union.

This article is part of a complex study of NGO activity in Poland in the context of European integration. Thus, studying the principles of non-governmental sector functioning in Poland is an important element of the scientific research.

According to the Law of Poland of April 24, 2003 “On socially beneficial activity and volunteering”, namely, Point 2, Article 3, the non-governmental organizations (the “third” sector) in Poland are determined as legal persons or units that are not part of the financial sector, that do not function with the aim of gaining profit and are established on the basis of a law – these are foundations and organizations. Political parties, trade unions and employer’s organizations, self-governing bodies of professional groups, funds that are founded by the state are not considered non-governmental organization except for the cases, mentioned in Point 4, Article 3 of the Law “On socially beneficial activity and volunteering”<sup>1</sup>.

The specifics of all civil society organizations lies in the fact that they are not created by the state but rather by the citizens, enterprises; they exist separately from the state, but function within the bounds of the current legislation

The **aim** of the article is to study the key principles of the “third” sector functioning in Poland in the context of European integration.

The **tasks** presuppose: research and analysis of the forms of civil society in Poland; determining the peculiarities of organizations’ structure, study the registration procedure according to the current legislation.

Poland has two key forms of popular civil society engagement which are also two key types of non-governmental organizations. They are organizations and foundations. Organizations and foundations have very similar goals, but they considerably differ in terms of establishment, functioning and financial activity.

The key difference between organizations and foundations lies in the fact that organizations are a form of popular consolidation in order to achieve a certain goal points out O. Grabovska, lawyer, President of the *Rezonans* Regional Charity Foundation, expert of the *Organization of Facilitation of the Ukrainian-Polish Cooperation* projects in the sphere of legal education and science in her publication entitled “Non-Governmental Organizations in Poland and Ukraine: Comparative Analysis”. This may be either a general or a particular goal (the latter means that the organization has to serve only its members). At the same time, the most important part of establishing a foundation is the capital<sup>2</sup>.

<sup>1</sup> Ustawa o działalności pożytku publicznego i wolontariacie z dnia. 2003. *Internetowy System Aktów Prawnych* <<http://isap.sejm.gov.pl/DetailsServlet>>.

<sup>2</sup> Грабовська, О. Неурядові організації в Польщі і в Україні: порівняльний аналіз. *Юриспруденція*. <<http://www.lawyer.org.ua/?w=r&i=&d=721>> (2017, February, 13)

In the course of studying the principles of NGO functioning we turned to the law of April 9, 1989 “On Associations”, which regulates the establishment and functioning of the organizations in Poland<sup>1</sup>.

According to the law, depending on the type of the organization there must be 3 or 15 founding members. These are people who make the decision about the creation of an organization. In case the number of members becomes less than 15, the activity of such an organization ceases<sup>2</sup>.

A contemporary Ukrainian scientist, Doctor of Philosophy, Professor V. Bekh who studies self-organization and self-regulation of social systems in a collective monograph entitled “NGOs in the Discourse of Society Democratization” draws attention to the fact that in their work organizations rely on the community work of its members and they independently determine their goals, activity programs, organizational structure and approves internal acts that determine their activity. The highest regulating body of an organization is the general assembly of its members. Members of the organization may change the aims of the NGO’s activity, may decide on terminating its activity on the whole or discontinuing individual membership in an NGO by following the procedure, determined in the statute. The goal of an NGO does not necessarily have to be a socially significant one, thus an organization may deal with particular interests of a narrow group of individuals (e.g. an organization of mountain holidays lovers)<sup>3</sup>.

Article 40 of the Law of Poland “On Associations” states that organizations in Poland are divided into unincorporated NGOs, incorporated NGOs, NGO unions and sports clubs that function in the form of NGOs<sup>4</sup>.

Unincorporated NGOs serve as a simplified form of organizations. They do not have the status of a legal person and implement their goals using its statute. Unincorporated NGO can be established by the minimum of 3 people, who adopt the statute, determine the spheres of the NGO’s activity, its legal address and select among themselves a person, who will represent the organization. They inform the controlling unit (usually this is the department of citizen activity in the local self-governing body) about the establishment of an NGO in a written form.

Unincorporated NGOs may start their activity unless within a 30-day period since the submission of the notification the body of local self-governing passes a decision to forbid the activity of this organization<sup>5</sup>.

Establishment of an unincorporated NGO is simpler than the registration of an organization in a Court Register; however the newly established unincorporated organizations have limited legal possibilities in carrying out activity. Such organizations cannot sign contracts when receiving grants, carry out public tasks or provide other services. Moreover, an unincorporated NGO cannot create regional branches, participate in establishment of unions, attract legal persons to their activities, carry out economical activity or receive financial aid. The only allowed source of receiving finances for an unincorporated NGO is membership fees.

An unincorporated organization is not a legal person but it is an NGO and can appear in court as a side in cases connected with implementation of objectives, predetermined by the statute of the organization.

An obligatory condition for NGO functioning is the existence of a statute which should include the following information: name of the organization that is different from other organizations; spheres of activity; objectives and methods of their implementation; obligations of the members; reasons for losing membership; mechanisms of receiving membership fees; possibility of amending the statute. If the organization plans to create branches, then this procedure must also be described in the statute.

Requirements of the Polish legislation concerning registration of an NGO are quite complex ones in comparison with other countries of the European Union. For instance, in France and the Netherlands

<sup>1</sup> Ustawa z prawo o stowarzyszeniach 1989. *Internetowy System Aktow Prawnych*. <[http://mostiskeruju.at.ua/news/reestracja\\_gromadskikh\\_ob\\_ednan](http://mostiskeruju.at.ua/news/reestracja_gromadskikh_ob_ednan)>.

<sup>2</sup> Ustawa z prawo o stowarzyszeniach 1989. *Internetowy System Aktow Prawnych*. <[http://mostiskeruju.at.ua/news/reestracja\\_gromadskikh\\_ob\\_ednan](http://mostiskeruju.at.ua/news/reestracja_gromadskikh_ob_ednan)>.

<sup>3</sup> Бех, В.П. (2011). Громадські організації у дискурсі демократизації суспільства. *xlibx.com* <<http://www.uk.xlibx.com/4istoriya/19263-42-gromadski-organizacii-diskursi-demokratizacii-suspilstva-monografiya-naukovoyu-redakci-yu-doktora-filosofskih.php>>.

<sup>4</sup> Ustawa z prawo o stowarzyszeniach 1989. *Internetowy System Aktow Prawnych*. <[http://mostiskeruju.at.ua/news/reestracja\\_gromadskikh\\_ob\\_ednan](http://mostiskeruju.at.ua/news/reestracja_gromadskikh_ob_ednan)>.

<sup>5</sup> Dąbrowska, K., Kopcińska, K., Świątczak, M., Schimanek, T. (2002). *Biała księga prawa dla organizacji pozarządowych. Analiza prawno-finansowych uwarunkowań działalności organizacji pozarządowych w Polsce*. Warszawa, 21.

two people and in Germany seven people are enough to found an organization. The minimum age when a person can be a member of an NGO is 14 while in Poland a person must be at least 16 years old.

Speaking about the legislation of the EU concerning NGOs, the participants of a multilateral meeting organized by the Council of Europe in Strasbourg in July 2002 adopted the “Fundamental Principles on the Status of Non-Governmental Organizations in Europe” where the key European standards in this sphere were standardized for the first time<sup>1</sup>.

The key legal act that regulates the status of a foundation in Poland is the Law of April 6, 1984 “On Foundations”, which has kept its legal force till present<sup>2</sup>.

This law does not give the exact definition of a foundation; however, key characteristics of this institution are given in separate articles. Namely, a foundation is an organization that is:

- established for the achievement of socially or economically beneficial objectives (article 1);
- established by a founder or natural persons, regardless of their citizenship or place of residence or by a legal person, registered in Poland or abroad, who have submitted an request to establish a foundation (article 2)<sup>3</sup>.

Scientist M. Stetsyk quite accurately explains the concept of “foundation” in his article entitled “Concept of a Foundation in Polish Legislation”. For example, he points out that a foundation may be established to implement socially and economically beneficial objectives, particularly such as healthcare, economy and science development, education and upbringing, culture and art, humanitarian aid, environmental protection and preservation of historical heritage (article 1)<sup>4</sup>.

According to the Law “On Foundations” the aims that a foundation lays out must correspond to the priority vectors of development of the Republic of Poland. That is why during the period of European integration cooperation with foreign organizations was established through foundations. According to Article 1 of the law “On Foundations” foreign foundations that have a legal address abroad can establish their representative offices on the territory of Poland. To create a representative office a foundation should receive a permit that automatically allows carrying out the activity stated in the permit. The permit is issued by the minister who is responsible for the particular sphere and the representative office. The permit may be issued if the representative office is established with the aim of objectives’ implementation and has the support of a Polish foundation<sup>5</sup>.

Natural persons, regardless of their citizenship and place of residence, and legal persons, registered in Poland or abroad, may be founders of a foundation. However, the location (legal address) of a foundation must be on the territory of Poland.

In the commentary to the law “On Foundations” it is written that the intention of establishing a foundation must be presented in a form of a notary act. This form is not required if the organization is established in the testament. The founder must state the objective of the foundation and the composition of assets assigned for objective implementation. Such assets which may include money, stock as well as movable and immovable property made over to the foundation<sup>6</sup>.

In the statute the founder determines the name of a foundation, its location and property, aims, principles, forms and sphere of activity, composition and management organization, mechanism of appointing, obligations and competences of this body and its members. The statute may contain other provisions, especially those related to the economic activity of the foundation, the acceptability and conditions for merging with another foundation, introduction of changes to the objectives and the statute as well as possible formation of other structures of the foundation, additional to the managing body.

A foundation may carry out economic activity on the scale necessary for its objectives implementation. If a foundation has to carry out economic activity, the price of the property means necessary for this activity cannot be less than 1,000 zł. According to Art.7 of the Law, a foundation must be registered in the State Court Register of Poland. A foundation acquires competence from the moment of entering the Register<sup>7</sup>.

<sup>1</sup> Фундаментальні принципи щодо статусу неурядових організацій в Європі. Прийнято учасниками багатосторонньої зустрічі, організованою Радою Європи. Страсбург, 5 липня 2002 р. *Юридичний вісник України*, 36.

<sup>2</sup> Ustawa o fundacjach. 1984. *Internetowy System Aktów Prawnych*. <<http://isap.sejm.gov.pl/DetailsServlet>>.

<sup>3</sup> Skiba, R. (2003). *Prawne warunki działania organizacji pozarządowych*. Warszawa, 45.

<sup>4</sup> Стедик, М.Б. (2007). Поняття фундації в законодавстві Польщі. <<http://www.confcontact.com/2007nov/stecik.php>>

<sup>5</sup> Ustawa o fundacjach 1984. *Internetowy System Aktów Prawnych*. <<http://isap.sejm.gov.pl/DetailsServlet>>.

<sup>6</sup> Cioch, H., Kidyba, A. (2007). *Ustawa o fundacjach. Komentarz*. Warszawa, 67.

<sup>7</sup> Ustawa o fundacjach 1984. *Internetowy System Aktów Prawnych*. <<http://isap.sejm.gov.pl/DetailsServlet>>.

There is a popular saying the Polish third sector: “If you have friends, found an organization, if you have money, register a foundation”. A foundation is established by notifying the founder about its establishment and allocation of certain funds for implementation of the objectives of the foundation. Thus notification should be done in the form of a notary act or as a part of the testament. In other words we can say that a foundations the capital (money, stock, movable and immovable property), allocated by the founder for the implementation of important social or economic objectives. According to the Polish legislation, one cannot be a member of a foundation, only occupy a certain post in the managing body. The objectives of a foundation may be altered only in case such a possibility is predetermined by a statute. The founder also does not have any particular authority in foundation functioning, except those predetermined by the provisions of the statute<sup>1</sup>.

Both foundations and organizations must be registered in the register of unions, other civil and professional organizations, foundations and public guardianship establishments of the State Court Register. Form the moment of their registration these subjects gain their legal status.

NGOs in Poland pass double registration – as an organization and as a legal person. Registration procedure for organizations and foundations is somewhat different, taking into consideration the peculiarities of establishment of these subjects. At the first stage of organization registration it is necessary to submit the application for registration as well as the statute, protocol of the constituent assembly, list of founders, decision of the general assembly to establish the organization, election of the founding committee, elected members of the presidium and internal controlling structures. The application form together with attachments is submitted in two copies. All the submitted documents must be either the originals or the notary registered copies. In the general the practice varies in different courts, e.g. some courts require three copies of the statute.

In her article “NGO registration on Ukraine and Poland” O. Hrabovska gives a list of documents necessary for registering a foundation. Among them she singles out the following ones: provision on foundation establishment (a notary approved application or another document that proves the establishment of a foundation); a statute (two copies and in case the activity of a foundation spreads on more than one province then three copies); decision on establishment of structures of a foundation (can be adopted y various management structures of a foundation, e.g. the Founders’ Council, the Council of the Foundation). Various representative bodies of a foundation may be created with such a decision, e.g. the Executive Board; everything depends on how these relations are settled in the statute. The decisions are made at the assemblies, at which a protocol is being written and signed (with the notary approval) by the people who are members of the representative bodies (concerns foundations who carry out economic activity). The signature samples are provided in the presence of a judge or an official court employee; provision, which determines the Ministry, carrying out the supervision over the foundation’s activity<sup>2</sup>.

After adoption of the Law of Poland of April 24, 2003 “On Socially Beneficial and Volunteer Activity” special provision were approved. They directly link registration to the existence of the socially beneficial component in the activity of an organization. The aim of these steps is to ensure the prevalence of socially beneficial component over management priorities, namely, limitation of the activity that threatens the implementation of the socially beneficial functions. For instance, the legislation of Poland contains the following requirements to socially beneficial organizations:

- list of statutory types of activity aimed at the interests of the whole community or a group of people in a difficult life circumstances;
- socially beneficial activity is the only type of activity of the organization;
- an NGO is either non-profit or its profit gaining activity is limited to achievement of statutory objectives;
- all the received money is spent on the socially beneficial objectives;
- existence of a collective controlling-supervisory body that acts independently from the management;
- statutory documents prohibit entering into contracts with and organization as a side as well as its participation in the activity that may carry a conflict of interest threat<sup>3</sup>.

<sup>1</sup> Cioch, H., Kidyba, A. (2007). *Ustawa o fundacjach. Komentarz*. Warszawa, 68.

<sup>2</sup> Грабовська, О. Реєстрація неурядових організацій в Україні та Польщі. *Електронний правовий дайджест для громадянського сектору*. < <http://www.lawngo.net/digest/010.pdf>> (2017, February, 13).

<sup>3</sup> Грабовська, О. Організації з особливим статусом у Польщі. *Юрист НУО*. <<http://www.lawngo.net/index>> (2017, February, 14).

In his paper “The Legal Basis of NGO Functioning” R. Skiba, a leading Polish researcher of the “third sector”, refers to the legislation of Poland which sets a period of time within which the NGO’s managerial bodies have to make a decision about adopting the status of a socially beneficial organization. This period in Poland is 90 days (up to 6 months in case the authorities require additional information).

The purpose of appointing the deadline of adopting such decisions is the necessity to ensure the observation of the legal clarity principle and to protect NGOs from possible overreaching of power by the authorities<sup>1</sup>.

On the basis of Point 4 Article 17 of the Law “On Organizations” and on the basis of Point 2 Article 8 of the Law “On Foundations” organizations and foundations in Poland do not pay for registration in the State Court Register. The Law on court expenditures in civil cases of March 2006 abolishes the free registration for foundations and organizations; however, this decision is the subject to various interpretations. That is why during the process of registration of an organization in Poland one currently needs to clarify the necessity to pay the registration fee in their regional department of the State Court Register. In case the registration fee is required, the constituent documents must include the receipt.

Apart from the Laws on Foundations, Organization and Voluntary Activity there is a number of other laws in Poland that also regulate the NGO and foundation functioning. These include laws “On State Finances” of 1998<sup>2</sup> and “On Access to Information” of 2001<sup>3</sup>, “On Professional Rehabilitation and Social Involvement of the Disabled”<sup>4</sup>. The issues covered by these laws concerned NGO functioning and ways of implementation of their activity.

Thus, NGOs that are established with the aim of realization the needs of the civil society and its members have various structure. According to the Polish legislation there are two main forms of structures – organizations and foundations, which have their own organizational peculiarities that are reflected in the laws of April 6, 1984 “On Foundations” and of April 7, 1989 “On Organizations” as well as in a number of other laws who are supplementary in character and reflect the changes in the issues of financing and philanthropy development. The processes of organization establishment and registration are based on the adopted statutes, so the statute actually determines the form of self-organization that was chosen by the founders. Taking into consideration the analysis of the organizational basis of NGO activity according to the laws of Poland and the EU, we have come to the conclusion that despite the differences in form and registration stages non-governmental organizations are an inseparable part of the Polish society. Taking on certain functions of the state, the non-governmental sector has facilitated the European integration processes and the development of democratic institutions.

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<sup>1</sup> Skiba, R. (2003). *Prawne warunki dzialania organizacji pozarządowych*. Warszawa, 56.

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