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LEGAL ENTITIES OF THE CORPORATE TYPE AND LEGAL ENTITIES OF THE INSTITUTIONAL TYPE

Summary: Legal entities are a very diverse normative category. Due to their complexity, they can be systematized according to various criteria. This article reviews corporate and institutional type legal entities according to Polish legislation.

Keywords: legal persons, foundation, association, corporation, law

There are many definitions of the term legal person in the literature. This term belongs to one of the basic terms used in both private and public law. An organizational unit that has been endowed with legal capacity by a legal norm is considered such a person. Therefore, it may be the subject of civil law relations. The purpose of this article is to analyze legal persons by their type - corporate or institutional. The article is mainly based on a review of legal acts, publications, statutes and definitions related to the discussed issue.

Legal persons are a very diverse normative category. Due to their complexity, they can be systematized according to various criteria. The basic

criterion of division is the relationship of the state to a given person. It is expressed in the method of its creation and termination, as well as in the nature of the property and the tasks performed. Based on this criterion, two basic types of legal persons can be distinguished: public legal persons and private legal persons. The term public covers mainly state and municipal (local government) legal persons. The former will include the State Treasury and other state legal entities, e.g. state schools, state enterprises. The second group includes: commercial capital companies, cooperatives, associations, church legal entities.

Another division, quite traditional, was made by Ł. Kaczyński: he divided legal entities into corporations and foundations, but this division can be applied to all entities that are not natural persons. The substrate of the corporation are natural persons, and the foundation - property. Prima facie, one could therefore conclude that in the first case (which rather includes companies), the real foundation of a legal subject (an intentional object) are people (their ordinary group), and in the second - these assets. [Kaczyński 2011] However, if we consider the normative structure of these entities more closely, we will come to a different conclusion - there are cases where there is no real foundation (in the above sense) of any kind. Firstly, the case of a corporate-type legal person in which only other legal persons participate, and secondly: an example of a foundation-type legal person (e.g. an investment fund with a system allowing it to be classified as such entities), whose assets have run out. It is a division that can be found most often in the legal or economic literature, according to which we distinguish two types:

- 1) Corporation (corporate-type legal person) - a legal person that is formed as a result of the organization of a certain number of natural persons aimed at achieving specific goals, these persons becoming members of this organization. Thus, corporate-type legal persons are characterized by the fact that their organizational structure includes members who, through the contributed shares or the contributions paid, create the property of the legal person, and through their

organizational powers decide about its activities. It can be about achieving both economic and non-economic goals. This type of legal persons includes, for example, not only associations and political parties, but also commercial companies and cooperatives.

2) Establishment (institutional legal entity) - a legal person whose establishment, purpose, type and manner of operation (sometimes also liquidation) are specified by the founder in the statute, moreover, an essential element is the separation and allocation by the founder of specific property constituting the basis for the operation of a given establishment. Thus, in the structures of the foundation type, there are no institutions of members, there is the institution of the founder (founder), which provides the legal person with its original assets, defines its organizational structure and goals of operation. (e.g. private university, foundations, state legal entities).

There are differences between the corporation and the plant:

1) the corporation is a community of natural persons; establishments serve to meet the needs of third parties using the services of the establishment.

2) the composition of the members of the corporation can be accurately quantified, and even by name; the circle of people using and able to use the facility is not marked.

3) the corporation's substrate is people; the plant's substrate is property.

4) members of the corporation decide on its goals and activities (general meeting); the purpose, type and method of operation of the plant are determined by its founder.

The division of legal entities into two types is not disjoint, because there may be ones that combine the features of both the corporation and the establishment.

Association - an example of a corporate type legal person

The basic legal act regulating the issues of associations, their establishment and functioning is the Act of April 7, 1989 - Law on Associations [Journal Of Laws of 2001, No. 79, item 855]. The association is a voluntary, self-governing, permanent non-profit association. The association independently determines its goals, action programs and organizational structures, and passes internal acts regarding its activities. The association bases its activity on the voluntary work of its members, but may also employ employees. In other words, an association is a group of people who decide to act together socially. Persons establishing an association may choose the type of association registered in the National Court Register and having legal personality or the so-called ordinary association that does not require registration with the National Court Register and does not have legal personality (cannot be the subject of rights and obligations). The procedure of registering an association and its subsequent management is relatively difficult, as its characteristic feature is democratic management. The association may be established by a group of at least 15 natural persons.

In Poland, special varieties of associations, codified separately and with special purposes, are: political parties, election committees, religious unions, employers' organizations, trade unions and craft guilds.

Foundation - an example of a legal person of an institutional type

In Poland, the basic legal act regulating the issues of foundations, their establishment and operation is the Act of April 6, 1984 on foundations [Dz. U. z 1991 r. Nr 46, poz. 203, z późn. zm.]. A foundation is defined as capital intended for a specific purpose. The purpose of the foundation must be socially or

economically useful, such as: health protection, economic development and science, education and upbringing, culture and art, welfare and social assistance, environmental protection and the care of monuments. The Foundation has legal personality. The Foundation can be set up by a natural or legal person (regardless of whether it has social or financial goals). The procedure of establishing and registering a foundation is relatively simple and requires the submission of a declaration on the establishment of the foundation to a notary public, approval of the statute by the founders and submission of an application for registration of the foundation to the National Court Register. Upon registration, the Foundation acquires legal personality.

A foundation is an establishment (a company-type legal entity), so - unlike, for example, associations, trade unions, parties, professional self-governments and other corporations - it has no members (it is impersonal). As a result, it is more independent than a corporation from natural persons, its creator (founder) decides about the purpose, property and rules of operation.

According to the previous jurisprudence of the Supreme Administrative Court, the foundation was not included in social organizations, which was justified precisely by the fact that the foundation is not a corporation of citizens, but a separate property mass (Order of the Supreme Administrative Court in Warsaw of January 12, 1993; I SA 1762/92, ONSA 1993/3/75). Therefore, foundations were denied, for example, the right to participate in administrative proceedings as a party (which is granted to social organizations by Article 31 of the Code of Administrative Procedure), or the right to lodge complaints with administrative courts in matters relating to other pursuant to Article 50 (1) of the Act - Law on Proceedings Before Administrative Courts). Recently, however, this view has been broken by a resolution of seven judges of the Supreme Administrative Court, which stated that foundations also enjoy the status of social organizations (Resolution of 7 judges of the Supreme Administrative Court of 12 December 2005; II OPS 4/05). Currently, foundations are, after associations, the second most popular legal form among non-governmental organizations.

In summary, legal persons constitute a different normative category and due to this fact they can be systematized according to various criteria. One of the divisions according to Polish legislation may be the division into legal entities of the corporate type and the institutional type.

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