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PREMISES FOR OBTAINING THE STATUS OF A PUBLIC BENEFIT ORGANIZATION BY ASSOCIATIONS

Summary: The Act of 23 April 2003 regulated the issue of the possibility of obtaining the status of a public benefit organization. This article focuses on the premises for obtaining the status of a public benefit organization by associations.

Keywords: public benefit organizations, associations, foundations, non-governmental organizations, law

Public benefit organizations are non-governmental organizations with public benefit status, which have been granted to them pursuant to a court decision on entry in the National Court Register. In Poland, NGOs have existed since 2003, when the Act on Public Benefit and Volunteer Work created this type of organization that performs public benefit tasks. [Piechota 2011] The aim of this paper is to present the reasons for obtaining the status of a public benefit organization by associations. The article is primarily based on a review of legal acts, regulations, laws, definitions and statutes.

The issue of the possibility of obtaining the status of a public benefit organization has been regulated in the Act of April 24, 2003 on Public Benefit and Volunteer Work [Dz.U.2010.234.1535 z późn. zm.], in particular in Section II Public benefit activities. According to the above-mentioned Public Benefit Act is a socially useful activity carried out by non-governmental organizations in the sphere of public tasks, which are defined in Art. 4 of the same act (the list includes 33 tasks considered to be public benefit spheres). This act also defines a non-governmental organization. So, according to Art. 3 (1), non-governmental organizations are legal persons or entities without legal personality that are not entities of public finance and do not operate in order to generate profit, to which a separate act grants legal capacity, including foundations and associations. It should be noted that public benefit activities may not be conducted by a political party, trade unions and employers' organizations, professional self-governments, and foundations established by political parties. Thus, the entities listed in Art. 9 of the Act of 27 August 2009 on public finances may not carry out public benefit activities. In addition, there is a bill on political foundations (print no. 381) which, in Art. 53 would introduce a change concerning the extension of the catalog of entities which are excluded from the application of the provisions of Section II of the Act, ie political foundations.

Apart from non-governmental organizations, public benefit activities may also be conducted by the entity mentioned in art. 3 clause 3 points 1 and 4 of the Act, subject to Art. 21 of the Act, i.e. legal persons and organizational units operating on the basis of the provisions on the relationship of the State to the Catholic Church in the Republic of Poland, on the relationship of the State to other churches and religious associations and on the guarantees of freedom of conscience and religion, if their statutory goals include conducting public benefit activities; joint stock companies and limited liability companies as well as sports clubs which are companies operating pursuant to the provisions of the Act of June 25, 2010 on sport [Dz. U. Nr 127, poz. 857, z późn. zm.], which do not operate in order to achieve profit and allocate all income to the implementation of statutory objectives

and do not allocate the profit to be distributed among their shareholders, shareholders and employees. An important element of public benefit activity is its social utility.

Conditions for obtaining the status of a public benefit organization:

According to Art. 20 points 1 and 2 of the Act, the exclusive statutory activity of entities applying for the status of a public benefit organization must be the activity related to the implementation referred to in Art. 4 of the Act on the sphere of public tasks, for the benefit of the community as a whole or a specific group of entities, provided that this group is separated due to a particularly difficult life or material situation in relation to society. It should be emphasized that the legislator uses not fully defined terms, i.e. the word community. According to the information contained on the website www.pozytek.gov.pl, a community, within the meaning of this provision, is a community of people living in a specific area (country, commune, city, powiat) connected by social ties, community living conditions, traditions, culture, etc. So if the statute of a given organization would be limited, for example, only to acting for the benefit of members, then this organization would not act for the benefit of the entire community. The most popular example which is very well illustrated by the above-mentioned the situation is an example of a Roma association which, in order to meet the condition set out in Art. 20 points 1 and 2, it cannot act only for its members, but for all Roma in Poland

The legislator does not exclude from the possibility of obtaining the PBO statute authorized entities that also conduct business activity. However, what was emphasized in the act, but also in the jurisprudence, the entitled entity may conduct business activity only as an additional activity in relation to the public benefit activity.

Another prerequisite for obtaining the PBO statute, which, moreover, is related to business activity is the need to allocate the excess of revenues over costs to

statutory activities. This means that the earning goal cannot override the statutory goals, the implementation of which should be the basic and most important activity for the organization. Running a business may be of an auxiliary nature, i.e. it may only serve to raise funds for the performance of statutory tasks. It has been assumed in the literature that due to the lack of an unequivocal definition of the concept of economic activity as "additional", it can be assumed that the revenues obtained from it constitute a smaller part of all revenues obtained by the organization. Importantly, the fact that the organization meets the conditions enabling it to start a business does not make it an entrepreneur, but only has the legal possibility to start a business. Only the actual undertaking of gainful activities on one's own behalf, which is reflected in the financial statements, can be considered as running a business by an NGO.

Another condition that must be met is the fact that the authorized entity (and thus also the association) has a statutory collective control or supervision body, separate from the managing body and not subject to it in the scope of internal control or supervision, while the members of the control or supervisory body: they may not be members of the management body or remain with them in a marriage, cohabitation, kinship, affinity or official reporting; have not been convicted by a final judgment for an intentional crime prosecuted by public indictment or a tax offense; may receive reimbursement of justified costs or remuneration for performing their function in such a body in the amount not higher than the average monthly remuneration in the enterprise sector announced by the President of the Central Statistical Office for the previous year. With regard to associations, this condition is already partially met, as members of the internal supervisory body (audit committee) cannot receive remuneration for performing their functions as, pursuant to the Act on Associations, members perform their functions socially. Considering the above, it should be stated that the act sets a limit of remuneration for members of the control body, but it does not apply to members of the management board. As for the remuneration of the members of the management board, it should be noted that the Court of Appeal in Warsaw, in its decision of

April 7, 1992, I ACr 130/92, PS 1993, insert to No. 11, item 9, stated that members of associations may also be employees, including members of the board of a given association. The argument of the court was based on the statement that the function of a management board member may be associated with the need to devote such amount of time to management matters that in practice it may correspond to a full day's employment and interfere with performing other paid work. In addition, members of the management body may not be convicted by a final judgment for an intentional offense prosecuted by public indictment or a tax offense.

A very important condition is that the statute or other internal acts of non-governmental organizations and entities mentioned in art. 3 clause 3 points 1 and 4, forbade:

1.to grant loans or secure liabilities with the assets of the organization in relation to its members, members of organs or employees, and persons with whom members, members of organs and employees of the organization are married, cohabiting or in a relationship of direct kinship or affinity, or affinity in the collateral line up to the second degree or are related to adoption, care or guardianship, hereinafter referred to as "relatives",

2.the transfer of their property to their members, members of bodies or employees and their relatives, on terms other than in relation to third parties, in particular if the transfer is free or on preferential terms,

3.using the property for the benefit of members, members of bodies or employees and their relatives on terms other than in relation to third parties, unless this use results directly from the statutory purpose,

4. purchase of goods or services from entities in which members of the organization, members of its bodies or employees and their relatives participate, on terms other than in relation to third parties or at prices higher than market prices.

In summary, according to Art. 22 sec. 1 of the Act on Public Benefit and Volunteer Work, non-governmental organizations, and thus also associations, must meet a

number of additional requirements to obtain the status of a public benefit organization if they conduct public benefit activities and economic activity (if applicable) for at least 2 years continuously. Importantly for associations that are entered in the National Court Register, it is necessary to submit an application to change the entity's data in the National Court Register. Importantly, this entry is constitutive in nature and only when it is made, the applicant obtains the status of a PBO.

References:

1. Ustawa z dnia 24 kwietnia 2003 r. o działalności pożytku publicznego i wolontariacie (Dz.U. z 2003 Nr 96 poz. 873 ze zm.).
2. Jolanta Blicharz, „Komentarz. Ustawa o działalności pożytku publicznego i wolontariacie. Ustawa o spółdzielniach socjalnych”, LEX 2012.
3. Marta Żołędowska, „Praktyczny komentarz do ustawy o działalności pożytku publicznego i o wolontariacie. Stan prawny na listopad 2011 r.”, MPiPS 2011.
4. Postanowienie Sądu Apelacyjnego w Warszawie z dnia 7 kwietnia 1992 r., I ACr 130/92, PS 1993, wkładka do Nr 11, poz. 9.
5. Poradnik Organizacji Non-Profit 3/2013 z 15.03.2013, s. 44.
6. Grażyna Piechota, Organizacje pożytku publicznego - w drodze do społeczeństwa obywatelskiego? Katowice, 2011.