

## **Abstract**

### **Title:**

*Constitutional freedom of establishment and operation of foundations and its implementation in the Polish legislation*

The freedom of establishment and operation of foundations, as expressed in Article 12 of the Polish Constitution, has assigned this type of legal entity a systemic position in civil society and has made it a beneficiary of the constitutional guarantees for the protection of property and property rights. The Polish foundation law, which was enacted in 1984 during the period of socialism and slightly modified during the period of political and economic transformation, does not fully comply with the standards set by the provisions of the 1997 Constitution. Therefore, the aim of the present dissertation was to solve the academic problem of determining the constitutional meaning of the term 'foundation', verifying the legitimacy of its classification as a civil society institution and the process of establishment and operation of foundations as a manifestation of the exercise of constitutional freedoms and rights as well as to examine the compliance of the statutory solutions with the decoded constitutional pattern.

After research and analysis, it has been established that the 'foundation' category mentioned in Article 12 of the Constitution of the Republic of Poland should be read as the designator of an existing concept, the substantive element of which is the value of public utility in the social or economic sphere. Thus, the legislator took the public foundation of private law as the object of protection.

Furthermore, it has been established that a 'foundation' in the constitutional sense is an entity (institution) of civil society, not because of its non-member structure (legal form of the corporate type), but rather because of the nature of the public utility functions it performs. In the catalogue of addressees of constitutional freedoms and rights established by legal experts, the foundation should be included in the category of entities distinguished by their social role.

It has also been confirmed that the constitutional freedom to establish and operate foundations is closely integrated with the guarantees expressed in Articles 21(1) and 64 of the Basic Law for the protection of property, other property rights and the right of inheritance.

By analysing detailed statutory solutions, it was found that the Polish foundation law contains many gaps, the filling of which requires resorting to complicated interpretation techniques and the application of legal analogies. This state of affairs is the source of numerous disputes in the science of law and in the practice of its application. This, in turn, creates uncertainty about the legal conditions of the foundation's activities and leads to a significant part of its legal framework being *de facto* determined by judicial decisions. Meanwhile, the source of regulations defining the legal framework for the exercise of a constitutional freedom (in this case, the freedom to establish and operate foundations) should be an unambiguous decision of the legislator and not of the bodies applying the law.

For the reasons stated hereinabove, the author postulates the adaptation of the Polish statutory regulation to the constitutional standards introduced by the 1997 Constitution which were decoded and consolidated in the views of the Constitutional Tribunal and particularly expressed during the period of its intensive adjudicatory activity.

**Keywords:**

foundation, funder, Constitution of the Republic of Poland, supervision of foundations, civil society