Teka Komisji Prawniczej PAN Oddział w Lublinie
vol. XIX, 2026, no. 1, pp. 107-120
https://doi.org/10.32084/tkp.10239

FAMILY FOUNDATION AS AN HEIR. ISSUES OF LIABILITY FOR COMPULSORY SHARE AND PROTECTION OF CLAIMS OF THE ENTITLED PERSON TO COMPULSORY SHARE AGAINST THE FAMILY FOUNDATION

Dr. Ewa Kosior

Łomża Academy in Łomża, Poland
e-mail: ekosior@al.edu.pl; https://orcid.org/0000-0002-1551-9505

Abstract. This article attempts to answer the question of whether current legal solutions sufficiently secure the legal position of statutory heirs entitled to a compulsory share, beneficiaries of a family foundation, and the family foundation itself. Although a family foundation can be an interesting tool for succession planning, its functioning raises several important issues, especially in the context of inheritance law and, to some extent, family law. Although a family foundation can be an effective tool for managing assets and ensuring their transfer in accordance with the founder's wishes, its operation in the context of inheritance law poses many challenges. Compliance with the rules of compulsory inheritance and the need to adapt it to inheritance regulations are the main problems that may be encountered by persons planning to establish a family foundation in Poland.

Keywords: compulsory share; family foundation; family law; assets; inheritance.

INTRODUCTION

The family foundation, as a new institution in Polish law, was introduced by the Act of 26 January 2023 on family foundations.[1] It was created with a view to facilitating the management of family assets and ensuring the continuity of their transfer, as well as satisfying the interests of family members. Family foundations are gaining popularity in various countries around the world, especially where there is a need for effective management of family assets, succession planning and protection of the interests of family members. Among the countries where family foundations have been introduced into the legal system are Switzerland, Luxembourg, Malta, Liechtenstein and Austria. Slightly different legal solutions have been introduced in individual countries. A family foundation may be established there for

[1] Journal of Laws of 2023, item 326 [hereinafter: the Act].

ISSN 1899-7694
e-ISSN 2719-7379

the benefit of beneficiaries who are to be supported by the foundation (e.g. family members) as well as for charitable purposes.

The aim of this article is to present the current state of knowledge in the field of legal aspects of inheritance, taking into account foundations as entities under inheritance law (heirs or persons obliged to pay a compulsory portion) and the inclusion of benefits received by a family foundation from its founder in the estate and the compulsory portion due.

This article uses a method of analysis with regard to the current legal situation and doctrinal views. The main research problem focuses on finding an answer to the question of whether the current legal solutions sufficiently secure the legal position of statutory heirs entitled to a compulsory share, beneficiaries of a family foundation, and the family foundation itself .

1. THE CONCEPT AND PURPOSE OF A FAMILY FOUNDATION

Until now, the Polish legal system has not offered dedicated tools for effective succession. The only options available were the general principles of inheritance law and the provisions of the Commercial Companies Code,[2] which allowed for the transfer of ownership but did not guarantee the continuity of the company. A family foundation is a tool that allows for the reconciliation of often conflicting interests – the continuity of the company with the long-term security of family members, regardless of their age [Karpiuk, Pawłowski and Woźniakiewicz 2023, 5].

The purpose of a family foundation is to accumulate assets, manage them in the interests of the beneficiaries and provide benefits to the beneficiaries (Article 2(1) of the Act). The basic category of assets contributed to a family foundation will include share rights in commercial law companies. However, it should be remembered that the Act does not modify the rules of commercial company law, and therefore in the case of partnerships, all partners must consent to their contribution to a family foundation (or, more precisely, to the transfer of all rights and obligations in a partnership) (Article 43 of the CCC). It is also worth considering that partners in partnerships (with the exception of limited partners in limited partnerships and shareholders in limited joint-stock partnerships) are liable for the company's obligations with all their assets, jointly and severally with the company. In such a situation, this liability will be transferred to the foundation, which means that the foundation's primary objective of protecting assets may not be fully achieved [Karpiuk, Pawłowski and Woźniakiewicz 2023, 5]. The property contributed to cover the initial fund cannot be returned to the founder,

[2] Journal of Laws of 2024, item 18 [hereinafter: CCC].

either in whole or in part. This is only possible upon the dissolution of the foundation and the payment of the liquidation assets (Article 20 of the Act).

Beneficiaries may be natural persons (including the founder) and non-governmental organizations conducting public benefit activities, and the circle of beneficiaries is specified in the statutes by the founder (Article 30(1) of the Act). Beneficiaries may receive benefits directly or indirectly from the foundation. Benefits are understood to mean assets, including cash, property or rights, transferred to the beneficiary or given to the beneficiary for use by the family foundation or family foundation in organization, in accordance with the statutes and the list of beneficiaries (Article 2(1) and (2) of the Act). These benefits may take the form of regular cash payments, including periodic payments or, in a sense, annual dividends, or other *ad hoc* payments. Benefits may also be non-monetary, e.g. making real estate or movable property available for use, the foundation covering the costs of education, medical treatment, etc.

Only a natural person with full legal capacity may be the founder of a family foundation. They make a declaration of establishment of the foundation before a notary public or in a will. The provisions of the Family Foundation Act allow for the establishment of a foundation by several founders if they make a declaration before a notary public. If the declaration is to be included in a will, there can only be one founder (Articles 11-12 of the Act). The founder specifies the detailed purpose of the family foundation in the statutes. A family foundation may conduct business activities to a limited extent (Article 5 of the Act).

The primary purpose of a family foundation is (or, in fact, should be, according to the founder's or founders' intentions) succession planning, protecting assets from claims and securing the interests of family members. Family foundations can benefit family members for many generations, offering mechanisms for protecting assets, ensuring flexibility in succession planning and achieving family goals. The explanatory memorandum to the draft law states that: "The purpose of the bill is to comprehensively strengthen the legal tools for conducting succession processes by adding to the legal system an institution for accumulating family assets, allowing capital to remain in the country for many generations and increasing the potential for domestic investment. A family foundation is intended to minimize the risk of unsuccessful succession and guarantee the continuation of business activities. The transfer of assets, including, among others, a family business, is intended to protect them from division, enable their multiplication, and thus also derive benefits from them, which can be used to cover the maintenance costs of persons indicated by the founder in the statutes."[3]

[3] Justification for the government's draft bill on family foundations, Sejm of the Republic of Poland, 9th term, Sejm Print No. 2798, https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2798 [hereinafter: Justification], pp. 5-6.

2. FAMILY FOUNDATION AS HEIR

Due to the fact that a family foundation has legal personality and is a separate entity from its founder, the family foundation continues to function even after the founder's death.

A separate issue is the entitlement to benefits from the family foundation's assets in the event of the founder's death. In such a situation, the family foundation's assets are transferred to other entities in the manner planned by the founder. These assets are excluded from inheritance under general rules.

The statutes of a family foundation may provide that in the event of the founder's death, he or she shall be replaced by a person previously designated by him or her, e.g. the other founder (if the family foundation was established by more than one person) or his or her heir. In the event of the founder's death and the absence of a beneficiary entitled to receive the property in connection with the dissolution of the family foundation, the property shall pass to the founder's heirs (Article 103(4) of the Act).

The Polish legal system is still dominated by the principles of statutory inheritance, which is the rule in civil law, as well as testamentary inheritance. The establishment of a family foundation during the testator's lifetime or in a will may constitute an alternative or supplement to these principles.

The testator may appoint one or more persons to inherit all or part of the estate. In the case of testamentary succession, the general rules apply, i.e.: If the testator has appointed several heirs to inherit the estate or a specified part of the estate without specifying their shares, they shall inherit in equal parts (Articles 959 and 960 of the Civil Code).[4] If inheritance occurs through a legal person, in particular a family foundation, existing at the time of the opening of the succession, then, in accordance with Article 925 CC, it acquires the inheritance at the time of the opening of the succession.

According to Article 927(3) CC: A foundation or family foundation established in a will by the testator may be an heir if it is entered in the register within two years of the announcement of the will. At the time of the opening of the succession, there is no entity that would acquire the rights and debts of the estate or a share therein. Against the background of the current Article 927(3) CC, opinions have been expressed on the legal effects of establishing a foundation in a will. The prevailing view is that the legislator has adopted the legal fiction that an entity which does not actually exist at the time of the opening of the succession will be an heir (it will have the so-called conditional capacity to inherit). It is treated as if it had legal capacity at the time of the testator's death, provided that it meets the statutory requirements, and therefore may be liable for the founder's obligations and for the payment of a compulsory share [Cioch and Kidyba 2007].

[4] Hereinafter: CC.

3. LIABILITY OF A FAMILY FOUNDATION AS AN HEIR FOR THE PAYMENT OF A RESERVED SHARE

A compulsory share is a sum of money due to a specific beneficiary under Article 991(1) CC. The descendants, spouse and parents of the testator who would be entitled to inherit under the law are entitled to two-thirds of the value of the inheritance share that would have been due to them under statutory succession, and in other cases – half of the value of that share – the statutory share (Article 991(1) CC).[5]

An entitled person who would inherit from the testator under the law is entitled to a claim for a reserved share, unless they have received the amount due in another form, i.e. a gift made by the testator, in the form of an appointment to the inheritance or in the form of an ordinary or specific bequest (Article 991(2) CC), and in the case of the testator's descendants – in the form of benefits for upbringing and general and vocational education (Article 997 CC), and in principle, the surplus over the average maintenance benefits accepted in a given environment.

Legal literature indicates that in order to calculate the statutory share due to the beneficiary and, consequently, to determine the amount of the claim for payment of the statutory share, several components must be determined. These are: (1) Determination of the inheritance share forming the basis for the calculation of the statutory share, (2) Calculation of the subject of the compulsory portion: a) determination of the net value of the inheritance, b) determination of the value of donations and other gains added to the inheritance, including the value of the founding fund of a family foundation or property in connection with the dissolution of a family foundation and the value of collection orders. (3) Determination of the share due to the beneficiary in the basis for calculating the reserved portion – 1/2 or 2/3, (4) Calculation of the amount of the reserved portion for a given beneficiary, (5) Determination of the value of donations and other gains credited towards the reserved portion due to the beneficiary, (6) Calculation of the amount of the claim due to the beneficiary against those obliged to satisfy or supplement the reserved share [Kapkowski 2023, 18].

---

[5] The obligation to pay this amount arises at the time of the testator's death and is part of the inheritance debt. The concept of inheritance debt is defined in Article 922 of the Civil Code and is inextricably linked to the definition of inheritance contained therein, according to which, upon the death of the testator, all rights and obligations to which the testator was a party at the time of death pass to one or more heirs. In its resolution of 21 March 2001, ref. no. III CZP 4/01, OSNC 2001, No. 10, item 144, the Supreme Court ruled that the heir remains in the same legal situation as the testator. Therefore, upon acquiring the inheritance, the heirs also become debtors or creditors in the legal relations of the testator [Mieszkiełło 2023].

Persons entitled to inherit from the founder who are not included in the group of persons entitled to take over the assets of the family foundation or omitted in the will are entitled to a compulsory share from the assets of the family foundation.

The assets of the family foundation taken into account when calculating the statutory share should come exclusively from the testator. Otherwise, assets that were not previously owned by the testator would also be added to the statutory share, and those entitled to the statutory share would receive more assets than if the family foundation had not been established. In order to maintain consistency with the current regulations on the statutory share in terms of taking into account inheritance, donations and specific bequests, the property in connection with the dissolution of the family foundation should only be added if it is related to the testator for whom the statutory share is determined (Justification, p. 49).

When calculating the reserved portion, the founding fund of the family foundation contributed by the testator is added to the estate if the foundation is not established in the will, as well as property related to the dissolution of the family foundation, with a value not exceeding the amount of the founding fund of the family foundation contributed by the testator (Article 993(2) and (3) CC). A family foundation may hold assets originating from the founder (founding fund), from profits generated by these assets as a result of its own activities (currently not taken into account when calculating the reserved share) and from inheritances, specific bequests, ordinary bequests and donations made by the founder or other persons (to which the existing rules for calculating the reserved share apply) (Justification, p. 48). This solution is intended to establish the correct basis for calculating the amount to be added to the reserved share, as part of the value of the family foundation's property may be excluded from the calculation [Mieszkiełło 2023].

When calculating the statutory share, the founding fund of a family foundation contributed by the testator more than ten years ago, counting back from the opening of the succession, is not added to the estate unless the family foundation is the heir, as well as property related to the dissolution of the family foundation received by persons who are not heirs or entitled to a statutory share more than ten years prior to the opening of the succession.

Furthermore, when calculating the compulsory share due to a descendant, the founding fund of the family foundation and property in connection with the dissolution of the family foundation are not added to the estate if their transfer took place at a time when the testator had no descendants. However, this does not apply if the transfer took place less than three hundred days before the birth of the descendant.

When calculating the statutory share due to the spouse, the founding fund of the family foundation and the property in connection with the

dissolution of the family foundation transferred before the marriage with the testator are not added to the estate (Article 994[1] CC). This solution is analogous to Article 994 CC relating to gifts made by the testator.

The reserved portion may take the form of a benefit from the family foundation or property in connection with the dissolution of the family foundation (Article 991(2) CC). Therefore, determining whether such an entitled person has received all or part of the reserved portion due to them in the form of a benefit from the family foundation or property in connection with the dissolution of the family foundation will require a comparison of the value due to the beneficiary under the reserved portion (half or two-thirds of the value of the inheritance share that would have been due to them under statutory succession, taking into account the calculation rules adopted in the provisions of the CC) and the value of the benefits or property received by the beneficiary of the reserved portion.

The beneficiary will therefore not receive from the family foundation that part of the benefits (or liquidation property) whose value corresponds to the amount received by them from the family foundation as a compulsory share or in fulfilment of the founder's maintenance obligation. The use of the particle 'or' in the aforementioned provision indicates that in a situation where the beneficiary is simultaneously entitled to a reserved share and maintenance, the amount of benefits received from the foundation is credited towards each of the obligations. The beneficiary retains the rights to benefits and property in connection with the liquidation of the family foundation above the value corresponding to the amount received by him or her as a statutory share and maintenance obligation. In practice, however, it may turn out that the amount due to him on account of the statutory share or the foundation's fulfilment of the maintenance obligation incumbent on the founder will be so high that he will completely lose his right to benefits from the family foundation and his right to property in connection with its liquidation, as this amount will exhaust all the funds allocated for benefits to that beneficiary and will exceed the value of the liquidation property due to him.

If a distant descendant of the testator is entitled to a reserved share, the benefit from the family foundation and the property transferred to his or her ascendant in connection with the dissolution of the foundation shall also be included in the reserved share due to him or her (Article 996(2) CC).

The inclusion of benefits received from a family foundation or in connection with the liquidation of its assets in the statutory share due to the beneficiary is intended to prevent the beneficiary of the statutory share from being privileged at the expense of the heirs obliged to pay it.

The value of the founding fund of a family foundation and the property in connection with the dissolution of a family foundation is calculated according to the status at the time of their transfer and according to the

prices at the time of determining the reserved portion, similarly to the value of a donation and a specific bequest (Article 995(3) CC). However, the transfer referred to in this provision actually refers to two different moments. In the case of the initial fund, it is the moment when the founder contributes the property to the family foundation in organization (Article 21(5) of the Family Foundation Act), and in the case of liquidation property, it is the moment when the property remaining after the creditors have been satisfied or secured is released to the entitled persons (Article 102 of the Family Foundation Act).

4. LIABILITY OF A FAMILY FOUNDATION FOR THE PAYMENT OF A COMPULSORY SHARE UNDER SPECIFIC PROVISIONS

A family foundation may be liable for the payment of a compulsory share not only as an heir (e.g. if it receives an inheritance from the founder), but also as a donee or legatee (e.g. if it receives a donation or a specific bequest from the founder) (Articles 991 and 1000(1) CC). It is worth remembering that a family foundation may also receive a donation from the testator that is added to the inheritance. In the light of the Supreme Court's case law, it is permissible to conclude a donation agreement in the event of death if its subject matter are specific items or rights and the agreement is not contrary to the principles of social coexistence.[6] Therefore, it is not excluded that the founder will conclude a *mortis causa* donation agreement during his lifetime, on the basis of which he will donate specific assets to an existing family foundation, provided that the effect of the sale will only occur upon his death.

In addition, the Act introduced two new categories of entities from which a claim for coverage or supplementation of the statutory share may be pursued, namely: a family foundation, whose founding fund has been added to the estate (Article 1000(4) CC), and a person who has received property in connection with the dissolution of a family foundation added to the estate (Article 1000(5) CC).

A family foundation that is not an heir may also be obliged to pay a compulsory portion if the beneficiary cannot receive it in full from the heir or the person to whom the legacy was bequeathed (Article 1000(4) and (5) of the Civil Code). The doctrine takes the position that this liability applies both when the beneficiary has received only part of the amount due under the compulsory portion and when they have not received it at all [Karpiuk, Pawłowski and Woźniakiewicz 2023, 24]. The obligation to cover the claim for a reserved share by the beneficiary (including a beneficiary family

[6] Cf. Supreme Court resolution of 13 December 2013, ref. no. III CZP 79/13, Legalis, and also the judgment of the Court of Appeal in Warsaw of 19 July 2018, ref. no.I ACa 365/17, Legalis.

foundation – Article 1000(1) CC) of a family foundation whose founding fund was added to the estate (Article 1000(4) CC) and a person who received property in connection with the dissolution of a family foundation added to the estate (Article 1000(5) CC) is updated at the same time, i.e. when the claim of the person entitled to a reserved share has not been satisfied either by the heir or by the person in whose favour the specific bequest was made, and at the same time the legislator has not determined the order in which the entitled person should then address their claim to these entities, nor has it made the possibility of making this claim to one of them dependent on the inability to obtain a claim for a reserved share from another [Kuźmicka-Sulikowska 2024, 5-6]. In this situation, the liability of the family foundation is subsidiary and equal [Mieszkiełło 2023; Kuźmicka-Sulikowska 2024, 5-6].[7] However, the foundation is liable only up to the amount of enrichment resulting from the contribution of the initial fund. Claims against the foundation expire 5 years after the opening of the succession [Karpiuk, Pawłowski and Woźniakiewicz 2023, 24].

In the event of the dissolution of the foundation, the person entitled to receive the reserved share may file a claim for payment of the amount necessary to supplement the reserved share against the person who received the property in connection with the dissolution of the foundation, which was added to the estate. The liability of that person is limited only to the value of the property received as a result of the dissolution of the family foundation, and if that person is also entitled to a compulsory share, that liability is further limited , i.e. to the value of the surplus of the property received in connection with the dissolution of the family foundation over the value of the compulsory share to which that person is entitled [ibid.]. In the case of multiple persons who received property in connection with the dissolution of a family foundation, the person who received the property earlier will be liable only if the person entitled to a reserved share cannot obtain a supplement to the reserved share from the person who received the property later (Article 1001(2) CC). A person who received property in connection with the dissolution of a family foundation will be able to release themselves from the obligation to pay the amount necessary to supplement the statutory share by surrendering that property (Article 1000(7) CC).

---

[7] Kuźmicka-Sulikowska points out that: "In practice, this means that a beneficiary who has not received the statutory share due to them (in whole or in part) either from the heir or from the person to whom the specific bequest was made may, at their discretion (of course, if such entities exist in a given case) direct a claim for supplementation of the statutory share either against the person who received a gift from the testator added to the estate, or against the family foundation whose founding fund was added to the estate, or against the person who received property in connection with the dissolution of the family foundation added to the estate."

The doctrine points to the lack of a codified ruling on the filing of a claim by a person entitled to a reserved share in a situation where several donees received gifts at the same time. In practice, the entitled person may pursue the claim at their discretion, e.g. in full from one of them. A donee who has made a payment to the person entitled to a reserved share is entitled to recourse against the other persons liable on the same legal and factual basis. The above comments may be applied accordingly to a family foundation whose initial capital has been added to the estate, or to a person who has received property in connection with the dissolution of a family foundation added to the estate.

The liability of the family foundation is limited, as it is obliged to pay the above amount only within the limits of the enrichment resulting from the coverage of the initial fund by the testator (Article 1000(4) CC) [Biały 2025, 426]. Also, a person who received property in connection with the dissolution of a family foundation, who is themselves entitled to a reserved share, is liable to other persons entitled to a reserved share only up to the amount of the surplus exceeding their own reserved share (Article 1000(6) CC), as does a donee (Article 1000(2) CC) or an heir obliged to pay a compulsory share (Article 999 CC) [Chabel-Williams and Figurski 2025, 324].

A claim against a family foundation obliged to supplement the reserved share on account of the received founding fund and against a person obliged to supplement the reserved share on account of the received property in connection with the dissolution of the family foundation shall become time-barred five years after the opening of the succession (from the date of death of the founder) – Article 1007 CC.

Pursuant to Article 129(12) of the Act, Article 1048(2) was introduced into the CC, which explicitly allows for the waiver of the statutory share in whole or in part. Thus, the legislator has unequivocally ruled on the admissibility of this type of agreement, which had previously raised a number of doubts in doctrine and jurisprudence. The agreement to waive the statutory share is concluded between the testator and the potential beneficiary of the statutory share, who must belong to the category specified in Article 991 CC. In practice, this means that the waiver of the reserved share will only take effect if the person obliged to pay it is the person in whose favor the waiver was made, while in relation to other persons the waiver of the reserved share will be ineffective [Wasielewska 2023, 49]. An important difference between an inheritance waiver agreement and a waiver of a reserved share agreement is that Article 992 CC does not apply to the latter, as a result of which the waiver of a reserved share by one of the entitled persons does not increase the reserved share of other entitled persons [Borysiak and Górniak 2024]. As the Supreme Court ruled in its resolution

of 17 March 2017:[8] Persons who have renounced inheritance are not heirs, and persons who have renounced only their statutory share remain among the statutory heirs, although they are not entitled to a statutory share [Kapkowski 2023, 20].

5. CONTROVERSY SURROUNDING REGULATIONS ON FAMILY FOUNDATIONS

The disposition of all or most of the testator's assets during their lifetime by contributing property to the founding fund of a family foundation, as well as making a donation to a family foundation more than 10 years before the founder's death, may significantly limit or even deprive the heir of their statutory right to a reserved share.[9] I believe that this institution, in the case of a family foundation, can be used to achieve the intention of depriving someone of their claim to a reserved share. This property will not be added to the estate (Article 993(2) CC), unless the foundation is the heir (Article 994^1(1) CC).

If the testator does not leave behind any assets of financial value, this will be a so-called empty inheritance, without the possibility of adding to it the property contributed to cover the founding contribution of the family foundation, which will result in the deprivation of the claim for payment of the statutory share.

The founder may conduct activities based on the family foundation throughout his or her entire life, and the property contributed at the time of its establishment to cover the initial capital will not go to the heirs entitled to a reserved share (after 10 years from the date of its contribution). This situation will be particularly unfair if the beneficiaries of the family foundation are, for example, only some of the founder's statutory heirs, e.g. one of the children, while the founder's other children or, for example, a child who is to be born (*nasciturus*) and was not included in the statutes as a beneficiary before the founder's death, will be entitled to a reserved share. In this case, the legal regulations will be used to circumvent the law and deprive the entitled persons of their claim to a reserved share, despite the postulates of protecting the testator's relatives and limiting the principles of freedom of testamentary disposition. P. Księżak points out that the provision of Article 994^1(1) CC seems unnecessary in this respect, given, on the one hand, the wide range of possibilities for structuring a family foundation

---

[8] Ref. no. III CZP 110/16, OSP 2018 No. 9, item 86, p. 3

[9] P. Księżak notes that "the reasons behind the construction of the foundation and the reserved portion do not change, but the time factor alone – which in this case does not seem particularly relevant – causes the beneficiaries to lose their protection" [Księżak 2024].

in such a way as to ensure the protection of assets and, on the other hand, the mechanism introduced at the same time in Article 997[1] CC [Księżak 2024]. This concerns the possibility of deferring the payment date, spreading the payment in instalments, and, in exceptional cases, reducing the amount of the reserved share, taking into account the personal and financial situation of the person entitled to the reserved share and the person obliged to satisfy the claim for the reserved share.

The legislator equated the contribution of the initial fund with donations to persons who are not heirs or entitled to a reserved share, which are not added to the estate if 10 years have elapsed between the time of their making and the opening of the estate. In the original wording of the draft law, the contribution of property by the founder to a family foundation was equated in effect with a donation to persons who are heirs or entitled to a reserved share, and was therefore to be added to the estate regardless of when it was made. The proposed wording of the provision under analysis was the subject of numerous discussions. It was pointed out that a family foundation is a stranger to the founder, and if it is not an heir, it cannot be treated as an heir. The legislator amended the original wording of the draft law in this respect and decided to equate the contribution of the founding fund with a donation to persons who are not heirs or entitled to a reserved share [Kwaśnicka 2023]. The author is of the opinion that if the beneficiaries of the foundation are heirs or persons entitled to a reserved share, then when calculating the reserved share, the founding assets of the family foundation and donations made to the foundation should be added to the estate regardless of when the foundation was established.

If the founder does not contribute all of their assets to the initial capital of the family foundation, i.e. they retain some assets for themselves, the general rules on inheritance and statutory share described above apply to that part of the assets.

The temptation to use a family foundation for the aforementioned purpose may also arise earlier, i.e. before the expiry of ten years. This is because a family foundation may donate its assets to another entity, including one outside the statutory heirs entitled to a compulsory share, and the assets remaining after its dissolution will be so small or non-existent that the person entitled to a compulsory share will not be able to satisfy their claims from the family foundation's assets. A family foundation may donate its assets without any restrictions, unless its statutes provide otherwise.

Regulations governing the functioning of a family foundation may also lead to the founder unknowingly harming his or her heirs as a result of failing to anticipate the legal consequences of legal events that may occur in the future. It is possible to imagine a situation where the foundation's statutes stipulate that the beneficiaries of the family foundation in the event of the

founder's death are his children. The premature death of one of the children, who left behind further descendants, will not result in those descendants entering into the rights of the deceased beneficiary. They may only be entitled to a reserved share, provided that they are entitled to such a claim under Article 1000 CC and other provisions. Much depends on the content of the family foundation's statutes.

CONCLUSIONS

Although a family foundation can be an effective tool for managing assets and ensuring their transfer in accordance with the founder's wishes, its functioning in the context of inheritance law poses many challenges. Compliance with the rules of the reserved portion and the need to adapt it to inheritance regulations are the main problems that may be encountered by persons planning to establish a family foundation in Poland.

The presented regulation may be used to disadvantage the founder's heirs entitled to a reserved share by transferring all or a significant part of the testator's – founder's assets to a family foundation. Although a family foundation is a separate legal entity, it may only be established for the purpose of excluding or limiting the founder's liability both for obligations related to conducting business activities *inter vivos* and in the event of death. This institution may be deliberately used by the founder to deprive those entitled to a reserved share of their claims by transferring all or most of his assets to a family foundation. In this case, the founder's "ally" is the passage of time, i.e. ten years from the contribution of the initial fund to the family foundation or the receipt of property by persons who are not heirs or entitled to a reserved share in connection with the dissolution of the family foundation (Article 994(1)[§] 1 and 2 CC).

In my opinion, these and probably other problems related to inheritance and the exercise of the right to a reserved share will become a significant issue in the near future, which will have to be addressed by both the beneficiaries themselves and lawyers. The legislator's aim in introducing the institution of the family foundation was to maintain the family business and ensure its continued operation after the founder's death, not to deprive beneficiaries of their right to a reserved share. The sense of justice (*ars boni et aequi)* opposes such use of the law. On the other hand, it is difficult to predict every situation, and legal regulations should not be casuistic. All that remains is to observe how this institution will be used in practice, and in particular what solutions will be provided for in the statutes of the family foundation in the event of the founder's death, especially in view of the wide range of possibilities for renouncing inheritance or a compulsory share within the framework of a complex of agreements (the so-called family agreement)

[Borysiak and Górniak 2024]. Only the practice of using the institution of the family foundation will show whether this institution will be used for purposes consistent with the legislator's intention and whether any intervention should be taken in this regard. In the current state of knowledge, the solutions adopted by the legislator should be considered optimal, with the previously indicated exception of Article 994^1 § 1 and 994 § 1 CC.

REFERENCES

Biały, Aneta. 2025. "Fundacja rodzinna w Polsce w świetle jej odpowiedzialności za zobowiązania fundatora – uwagi wstępne na tle ustawy z dnia 26 stycznia 2023 r." *Prawo i Więź* 3:423-45.

Borysiak, Witold, and Kacper Górniak. 2024. "Commentary on Article 1048." In *Kodeks cywilny. Komentarz*, edited by Witold Borysiak. C.H. Beck.

Chabel-Williams, Karolina, and Jędrzej Figurski. 2025. "POLAND: the family foundation as a tool for asset protection and succession planning." *Trusts & Trustees* 31:321-26.

Cioch, Henryk, and Andrzej Kidyba. 2007. *Ustawa o fundacjach. Komentarz*. Edited by Andrzej Kidyba. Lex el.

Kapkowski, Rafał. 2023. "Problematyka obliczania zachowku w świetle ustawy o fundacji rodzinnej." *Palestra* 9:19-35.

Karpiuk, Katarzyna, Jacek Pawłowski, and Piotr Woźniakiewicz. 2023. "Fundacja rodzinna: przełomowe rozwiązanie dla biznesu rodzinnego. " *Nowy Przegląd Notarialny* 25, no. 1:5-34.

Księżak, Paweł. 2024. "Commentary on Article 994^1." In *Kodeks cywilny. Komentarz*, edited by Witold Borysiak. C.H. Beck.

Kuźmicka-Sulikowska, Joanna. 2024. "Zachowek." *Edukacja Prawnicza* 2:5-12.

Kwaśnicka, Luiza. 2023. "Commentary on Article 129." In *Ustawa o fundacji rodzinnej. Komentarz*, edited by Piotr Grabowski and Daria Leszczyk. C.H. Beck.

Mieszkiełło, Michał. 2023. "Commentary on Article 129." In *Fundacja rodzinna. Aspekty prawne i podatkowe. Komentarz*, edited by Paweł Tomczykowski. C.H. Beck.

Wasielewska, Anna. 2023. "Zachowek a fundacja rodzinna." *Relacje – Magazyn Firm Rodzinnych* 3:46-49.