

LEGAL QUALIFICATION OF SPONSORSHIP IN POLISH LAW¹

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Summary. This study explores how the concept of sponsorship might be embodied within the Polish legal order. In an economic and social environment, a sponsorship agreement might be seen as a new means of financing charitable works. It should be recognized that this type of agreement is not currently recognized by Polish state law. A sponsorship agreement is distinct from a sponsoring agreement or a donation. There is no comparable institution in the Polish legal order. It is crucial for this study to determine how sponsorship can be adapted to conform with Polish civil law. Finally, it asks if the law of Poland could adopt the American solution to financing charity activity.

Key words: sponsorship, sponsoring, donation, innominate agreement, financing charitable works

The sponsorship institution may be a new financing solution for church charity in Poland. However, as a canonical institution, it is not known. In the Polish legal system, it will fall within the scope of innominate agreement, in which the parties themselves shape the content of the mutual agreement. However, it should be highlighted that the canonical sponsorship cannot be confused with a sponsoring which means to support a person or organization by giving money in exchange for advertising. Unlike sponsoring, the institution of sponsorship consists of financing a specific legal entity (e.g. church charity) using name of sponsored entity. We can note that there are many legal requirements in North American canon law that must be met when they are entered into sponsorship agreement [Morrisey 2001, 27].

The article aims to show the canonical qualification of the sponsorship institution in Polish law. The subject analysis will be based on legal solutions applied in the USA and Canada. Comparison with solutions applied in North

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American countries is to answer the question to what extent legal regulations in Poland allow the use of sponsorship in the Polish legal order.²

1. CHARACTERISTIC ELEMENTS OF SPONSORSHIP

The characteristic elements of each sponsorship agreement are the mutual obligations of the sponsor and the sponsee. The sponsor's obligations include cash benefits to the sponsored institution, while the sponsee is to perform its statutory tasks. This division of responsibilities is clear and stems from the conceptual significance of the sponsorship institution, which consists in financing a charitable institution that is unable to self-finance. The sponsor transfers its own funds to the sponsored institution, who spends them in accordance with the agreement. This means that the sponsor has the obligation to cooperate with the sponsor to finance charitable works that the sponsee is unable to finance. His duties are not limited merely to one-way legal action. He is also a part of the governing board, and he or she has the right to speak out before certain corporate decisions are undertaken and he can influence in decision-making. In Polish writing this type of sponsorship is often called a social sponsoring [Grabowski 2013, 115]. It is not appropriate as it does not reflect right meaning of sponsorship in canon law. What is distinctive for sponsorship is that someone finances charity, but also want to get involved in the management or decision-making of sponsored entity. Sponsors also undertake action in their sponsor's name [Nygren 2001, 41].

We have to keep in mind that Catholic charities were established by religious congregations as ecclesiastical juridic persons, as a result of socio-economic changes in the USA and Canada, because they do not have the ability to self-finance. Therefore, they need a sponsor to endow them to carry out their charity activity. In practice, it refers to the unique relationship between legally formed system or entities; such as hospitals, clinics, nursing homes and religious institutes or diocese that has founded them. A sponsoring organization can be a religious institute, a diocese or some other canonical entity with juridic personality or lay person (e.g. entrepreneur).³ Each Catholic institution which is sponsored by a sponsor is a part of the sponsoring juridic person on which it depends [Huger 2001, 20]. In canon law sponsorship is considered to be both a formal relationship (in legal documents) and an informal one that represents a commitment to work together in mutual service to the mission.

² For an extensive bibliography on sponsorship see Thornber 2009, 121–30.

³ D.C. Conlin pointed out that the term “sponsor” does not transfer well by analogy to Book V of the 1983 Code of Canon Law, which covers the temporal goods of the Church. To accept sponsorship responsibility for a person entering the Catholic faith is not the same reality as to claim ownership or sponsorship of a Catholic health care facility [Conlin 2001, 20].

[Roche 2010, 2]. Sponsorship agreements are well-known way of financing charitable works in North America it allows the sponsee entity to carry out its statutory activities.

Another quality of sponsorship is to preserve Catholic identity and ethical directives. This is of particular importance when other parties of the agreement do not share Catholic values in the area of medical techniques and business practices [Morrissey 1999, 38]. For this reason every sponsorship agreement has to include statement of Catholic identity which shows that catholic charity will be carried out in accordance with the mission, vision and identity of the Catholic Church. It should be approved by the ecclesiastical authorities (particularly by the diocesan bishop). With new models of sponsorship, the diocesan bishop has a crucial role in promoting and maintaining the Catholic identity of the healthcare organization.

2. SPONSORSHIP AND DONATION

Sponsorship is not a donation. It should be noted that the legal qualification of the sponsorship agreement does not correspond to the donation agreement. Donation in accordance with Art. 888, para. 1 of the Polish Civil Code⁴ is an agreement between donor and a donee. The donor commits to make a free-of-charge performance to the donee at the cost of his property. The lack of economic equivalent is the essence of every donation. For instance, if the donee was obliged to carry out a certain action or service, we are not dealing with a donation but a mutual agreement either named or innominate one, it is sort of *do ut facias*.⁵ If we have made a division into unpaid and paid act, the donation should be classified as an unpaid legal act. It is a paradigm of unpaid legal action. It is because the donation is donor's agreement with donee, through which the donor undertakes to donate his property free of charge to donee and the recipient accepts it [Załużki 2019, 1786]. According to the concept of the Polish legislator the donation belongs to named agreement which allows donor to donate property without an equivalent. For this reason we cannot classify a sponsorship agreement as a donation agreement in Polish legal order. There is no equivalent or services in the donation agreement. The key of this thing is the will to give someone financial gain for nothing. This benefit loses its character if it was met in order to provide any equivalent.⁶

In the context of sponsorship, as a form of donation, we should also consider another form of donation, which is a donation with an instruction (*negotium*

⁴ Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, item 1145 as amended.

⁵ Judgment of the Administrative Court in Katowice of March 29, 2017, I ACa 1026/16, Legalis.

⁶ Judgment of the Administrative Court in Szczecin of May 24, 2016, I ACa 1175/15, Legalis.

cum modo). It means that the donor imposes on recipient an instruction of some activity and the recipient accepts it. The instruction is a clause added to the donation agreement. Such a donation is still unpaid, as this obligation is not self-existent but, according to the donor's intention it is a requirement added to the donation. A person making a free of charge property contribution would like to ensure that the recipient will carry out specific activities, e.g. taking care of a person, the recipient will start learning for the money received.

As mentioned above the sponsorship agreement is the mutual obligations of the sponsor and the sponsee. The sponsor agrees to pay for the sponsee amount of money over a period of time in order the sponsee could carry out its statutory goals. The donation is not an obligation if its basis is mixed agreement or innominate agreement. According to Art. 889 of the Polish Civil Code the donation does not constitute free-of-charge increments if performance follows from a contract regulated by other provisions of the Code. It means that we cannot apply specified legal provisions that regulate a different legal relationship, i.e. we cannot apply provisions for named agreement to legal relationships that do not correspond to it. In view of this fact that sponsorship is a type of agreement different from donation.

3. SPONSORSHIP AND SPONSORING

In doctrine of law one can be noticed a distinction between 'sponsorship' and 'sponsoring'. Sponsoring means the transfer of funds to sponsored entity to achieve its objectives in exchange for promoting the sponsor's brand.⁷ This is a commitment agreement. The sponsor gives his money in exchange for the promotion of his brand, products and services that is characteristics for advertising and sponsored entity receive money to fulfill its goals. In practice, sponsoring cannot be equated with a donation or financial patronage this is other type of legal action. In an economic and social environment the sponsoring is element of struggle for the customer which is the sponsor's focus. Strictly speaking, sponsor finances a given enterprise not because he likes it, but because it involves increasing his popularity and increasing his trademark.⁸ His trademark is often put at the place of sponsored institution, e.g. a football stadium, or sportsman's t-shirt along with the appropriate name of sponsor. The type of service should be precisely specified in the sponsoring agreement. The sponsored entity is obliged to promote the sponsor's products or services.

⁷ For an extensive consideration of this aspect see Adamus 2006, 35–51.

⁸ According to L. Stecki, the sponsoring is a payable financial gain, expressed in money, things or services, made to a specific entity in order to perform the activities specified in the sponsorship agreement [Stecki 200, 144].

This shows that economic factor is an essential in every sponsoring agreement [Ignaczewski 2004, 194].

Apart from providing funds for person or organization the sponsorship may also mean a providing of services for sponsored entity. These services may rely on the tasks of healthcare, education and other services belonging to the sponsor. As a rule, this type of sponsorship stems from the subject of the sponsor's activity. It is also called the sponsorship in the form of services [Grabowski 2013, 120]. In this case the sponsor has the opportunity to promote his trademark by providing services.

We have to bear in mind that sponsorship in canon law is a completely different type of agreement. Sponsorship is legal relationship undertaken between sponsor and sponsee. Sponsor uses name of the sponsored institution in order to carry out sponsored duties. In our case, we are referring to works undertaken on behalf of the Catholic Church. Sponsorship can be seen as a way to ensure that the healing and educating mission of Christ continues within the Church through particular ministries. Francis Morrissey considers that "sponsorship" entails three important elements: (1) the use of a particular name; (2) the exercise of certain governance responsibilities that arise from this use; and (3) some form of accountability to Church authorities. For this reason, it often entails elements of "quality control". To a certain extent, sponsorship could even be considered somewhat parallel to a franchise [Kaleta and Morrissey 2018, 516].

There is no one and unified sponsorship model. It depends on the circumstances of the place and time, as well as the content of the sponsorship agreement. In the event that sponsor has decided to put money into charity activities (e.g. running a hospice) and he will collect revenues specified in the contract, then we are not dealing with a sponsorship agreement but with expanding his economic activity.⁹ This investment should be included in the costs of its business activity. In other words, if an entrepreneur invests in another activities for the purpose of making a profit, then that investment is recognized as costs of the business.

Sponsorship occurs when the sponsor transfers money to another entity, but does not receive revenue from it. For this reason we cannot call it as sub-type of sponsoring agreement, although some activities of the sponsor are similar to sponsoring agreement. Rather, we should call it as a sponsorship agreement which meets the requirements of an innominate agreement.

⁹ For an extensive consideration of this aspect see Sznajder 2000, 40–41.

4. SPONSORSHIP AS AN INNOMINATE AGREEMENT

The way of financing the church's charity which was described above indicates that we are dealing with another type of agreement that has not been regulated by state laws. Taking into account the premises spelled out by W. Katner we can classify the sponsorship agreement as an innominate agreement. They are as follows: 1) bilateral legal action; 2) there is no name in state laws; 3) failure to specify the *essentialia negotii* of such an agreement in the Polish Civil Code or another act, although it may contain indications as to what the agreement should contain in its content; 4) there is no identity of the contract with the named agreement or similarity that indicates the type of named one; 5) determination of rights and obligations of the parties in the agreement; 6) staying in accordance with the legal order, i.e. in accordance with the created legal relationship with its nature, laws and principles of morality.

We have to highlight that it is two-sided legal act regardless of how many entities participate in entering into sponsorship agreement. Both parts of agreement are supposed to determine rights and obligations of the contract. The basis for this legal act is the principle of contractual freedom (Art. 22 of the Constitution of Polish Republic)¹⁰ and parties autonomy. In accordance with Art. 353¹ of the Polish Civil Code: "Parties executing a contract may arrange their legal relationship at their discretion so long as the content or purpose of the contract is not contrary to the nature of the relationship, the law or the principles of community life." This provision indicates the basic principles of executing contracts and it means that the parties arrange themselves the subject of the contract according to your own wishes (*contractus innominatus*) which are within the limits of the law that is in accordance with Art. 58 of the Polish Civil Code and respects equity. The source for creating such legal relations is the formulating a new economic and social practices, which state laws did not determine in detail. Legislator only after a longer period of application of given legal solutions defines in the form of an act. Then the innominate agreement becomes a named one. A well-known example is a lease agreement, which initially belonged to innominate agreement, and after the amendment to the Polish Civil Code in 2000 it became a named agreement.¹¹

The lack of legal regulations regarding the sponsorship agreement does not mean that the legislator recognize it as a non-legal phenomenon. Rather, it is understood as an innominate agreement, which belongs to "contractual freedom" and means that the parties search for own legal instruments to achieve their objectives [Stelmachowski 1998, 89]. In fact, its legal structure is much

¹⁰ The contractual freedom means that the state delegates its normative powers to the parties themselves [Radwański 2008, 10].

¹¹ It can be seen in the literature discussion of the need to adjust an additional agreement particularly ending with -ing, for example sponsorship, factoring [Katner 2010, 11].

more complex than the overall commitment model. The parties may impose many rights to the provision specified in the contract and related claims [Załućki 2019, 812].

In practice, the sponsorship agreement is similar to mixed agreement [Romanowski 2009, 121] and it has its subtype in the sponsoring agreement. The parties can arrange the content of the agreement by drawing from typical patterns of named agreement giving them complex character. Particularly, they can “borrow” selected elements of various contracts by making up a new type of compilation contract [Ignaczewski 2004, 4]. This is characteristic that work agreement is a basis for many innominate agreements both material (e.g. financing charity) and immaterial (e.g. building trademark). In this case they can be applied agreements as follows: service contract, assignment contract, intermediation contract. Nevertheless, the content of sponsorship agreement should not however be contrary to the law, i.e. its purposes, obligations may not violate a law. What is crucial for innominate agreement is that the parties adopt new solutions for themselves.

The parties should determine carefully the scope of their rights and obligations due to the fact that the sponsorship agreement may affect the manner of managing and carrying out charity activities.¹² Particularly every sponsorship agreement should include provisions on: 1) Catholic mission; 2) Catholic identity; 3) compliance with canon law; 4) ownership; and 5) reserved powers. Reference to the Catholic mission should affirm the corporation’s purpose, i.e. to perform works of charity in accordance with tradition of the Roman Catholic Church and canon law. Catholic identity implies that the undertaken activity will comply with Ethical and Religious Directives for Catholic Health Care Services.¹³ The sponsorship agreement should provide for Catholic health care organizations to refuse certain medical services that violate human dignity;¹⁴ it may also apply to solidarity and social justice in employer employee relations. On the other hand compliance with canon law is to assure that Catholic healthcare is governed under canon law and is also subject to applicable civil law and corporation statutes. The legal usage of ownership belonging to the corporation must be carefully formulated in every sponsorship agreement and fully documented for the benefit of both parties. Lack of clarification would permit performing medical procedures inconsistent with applicable ethical and religious directives. We have to bear in mind that the

¹² Sponsorship cannot be called as a mutual agreement. It is because the performance of the services of one of the parties is not equivalent to the performance of the other.

¹³ The document is available online at <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/index.cfm> [accessed: 2.11.2019].

¹⁴ For instance, at the present time, there is great pressure not to recognize a “conscience clause” for Catholic hospitals, so that they would be obliged to offer abortion and sterilization procedures [Mahony 1999–2000, 465–67].

sponsors will want to get involved in the strategic directions of entity which they finance. There may be a risk that sponsorship may become a “dictatorship.” For this reason every sponsorship agreement must include “reserved powers.” It means protection of church ownership and its canonical control.¹⁵ This relates to members of congregation who do not want to relinquish control of their health care organization. It is important to preserve the elements allow us to construct a model of the sponsorship agreement. The drafting of such a statement requires the expertise of both canon and civil lawyers who can draw upon the knowledge of the religious sponsor regarding the mission that the incorporated apostolate endeavors to undertake.

The purpose of the sponsorship agreement is based on the financial interests of the parties concerned. The sponsor is interested in financing a charity work in exchange for having an impact on the management strategy of the institution providing the charitable work. In this way, this kind of strategy is similar to contract work or contract service.

It is important for parties to enter into a legal relationship, including explanations of terms, names that they use in the sponsorship agreement. One cannot use terms that are foreign or unknown to the legal order in Poland. This is particularly important when agreements are known in North America, but they are not known in Polish legal culture.

5. PROMOTING A SPONSORSHIP

Sponsorship is important complement of funding charitable works carried out by the Catholic Church. In North America it is widely used and works in various models developed by the parties. American law, unlike Polish law, does not regulate financing agreements by law. Therefore, it is difficult to find a comparable institution in Polish legal order. We have to bear in mind that sponsorship as a finance tool to support Catholic charity was formed in different circumstances. First, it was an initiative of diocese and religious institutes to maintain Catholic charity which was unable carry out its activity. It was only later the lay people got involved in decision-making in Catholic ministry. Over time, sponsorship became more identified with the policy setting of the Catholic charity’s board of directors.¹⁶ The involvement of other-than-Catholic parties in sponsorship of healthcare institutions led to increasing importance of the sponsorship institution. In some instances, this resulted in the take over and operation of Catholic institutions on a for-profit basis.¹⁷ Currently, the

¹⁵ The term of control could best be defined as the reserved right to have the final say in certain enumerated corporate affairs.

¹⁶ The evolution of sponsorship you can find in Kealy 1999, 195–209.

¹⁷ For instance, Saint Louis University Hospital in 1997 was sold to a for-profit corporation. In

sponsorship is regularly in the process of being transformed and reshaped to achieve an appropriate balance between the sponsored institution and the sponsoring entity.

It is worth noting that in Poland charitable work of the Church as opposed to American model is financed from many sources. The detailed catalog was listed in Art. 40 of the Act of 17 May 1989 on the relationship between State and the Catholic Church in the Republic of Poland.¹⁸ It includes the following sources: 1) offerings in cash and in nature; 2) legacies and donations; 3) revenues from events and public collections; 4) subsidies and offerings from state, social, religious and private institutions and enterprises; 5) payment for services provided by church charity; 6) income from economic activities carried out by Caritas and Caritas of the Diocese both directly and in the form of separate entity; and 7) income of church institutions. Polish legislator does not set out that charity activity can be financed by sponsorship. For this reason sponsorship belongs to a new and innovative financing model of charitable works. It can also be the answer to rapid changes in society and economy conditions in Poland. Sponsorship agreement can be an appropriate example how to deal with lack of funding to maintain Catholic charity and its mission in modern world.

A key of strategy for placing in the market sponsorship is promotion long-lasting relationship with potential sponsors e.g. lay people, entrepreneurs. Nevertheless, we have to note that the sponsorship agreement is not for mutual benefit one. Sponsorship, unlike sponsoring is not about transferring money in exchange for the promotion of brand, products or services. As mentioned above, sponsorship means transferring own funds to the sponsored institution, which is unable to self-finance. The sponsor doesn't get anything in return. He can be a part of the governing board, and he can decide on the management of transferred funds. For this reason it may be difficult to find potential sponsors and not too much convincing. In practice, it can be seen that many sponsors are more focused on financing a particular project or one-time gift than long-term financing of any works. In this regard, it is important to build solid relationships with sponsors which should be based on Christian values, willingness to support people in need.

Another factor that may cause difficulty in applying sponsorship is the fact that the Polish legislator does not provide for tax exemptions for this type of liability. If it was a sponsoring, this activity would belong to services and as such are subject to VAT – at a rate of 23%. However, an organization that has received this type of income could be exempted from it if its annual income

June 2015, the university announced that it would reacquire the hospital and transfer it to the non-profit Catholic hospital system SSM Health Care.

¹⁸ Journal of Laws of 2019, item 1347.

does not exceed EUR 40 000.¹⁹ On the other hand if it was a donation for the church charity and care activities the total amount is excluded from the tax base. Such donations can be deducted in full, even up to 100% of achieved income. Sponsorship is not either sponsoring or donation. For this reason sponsorship is subject to general tax requirements on goods and services.

Frank Morrissey considering the possibility of applying sponsorship concluded that model of sponsorship which has been used particularly in the United States, Canada, Ireland and Australia it is more common for the Church to establish foundations and trusts to look after the temporal goods involved than to establish a new approach of sponsorship [Morrissey 2011, 68].

CONCLUSION

The points explored in this study are an attempt to show how sponsorship might take effect in Polish civil law. Sponsorship is an instrument by which an institution or public ministry of the Church can continue its work in the name of, and in communion with the family of faith. The sponsor transfers assets, usually money, to the sponsored institution, which then uses them in accordance with the agreement. The sponsoring organization can be a religious institute, diocese or even one or a group of lay people. Another benefit arising from sponsorship is to increase the productivity of a sponsored entity as well as its profitability. The sponsor participates in the management of the sponsee's work and can carry out its works under its name. This is beneficial for both the sponsor and the sponsee. The sponsor increases the scope of services that carries out under a different brand, while the sponsored institution can carry out tasks that it would otherwise be unable to finance.

Analysis of the legal qualification of sponsorship in Polish civil law shows that sponsorship is not defined in the Polish Civil Code. Sponsorship cannot be confused with donation or sponsoring. They are two different legal institutions. A donation is an agreement between donor and a donee. The donor commits to making a free-of-charge transfer of assets to the donee at an equivalent cost to the value of the donor's assets. On the other hand, sponsoring is a legal instrument which involves the transfer of funds to the sponsored entity to achieve its objectives in exchange for promoting the sponsor's brand.

According to the Polish Civil Code, the sponsorship agreement is classified as an innominate agreement. The parties to the agreement arrange their legal relationship according to their own wishes. The creation of such legal relations is an example of new economic and social practices, which state law does not determine in detail.

¹⁹ Act of 11 March 2004 on tax on goods and services, Journal of Laws of 2018, item 2174 as amended, Art. 113 sect. 1.

It is important to bear in mind that sponsorship can become a new way of financing charitable activities in Poland. However, a problem arises with the spread of this form of financing. Sponsors are inclined to finance a particular project or one-time gift than long-term projects. An alternative to this can be postulated, as suggested by Francis Morrisey, who says it is more common for the Church in Europe to establish a foundation or a trust to protect the temporal goods owned by a Catholic charity than to establish a new sponsorship model adapted to the requirements of the law of the country.

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KWALIFIKACJA PRAWNA SPONSORSHIP W PRAWIE POLSKIM

Streszczenie. Przedstawiony artykuł jest próbą ukazania, w jaki sposób instytucja sponsorship może być recypowana w polskim systemie prawnym. Sponsorship jest instrumentem prawnym ustanowionym głównie w krajach Ameryki Północnej. Jej celem jest subsydiarna pomoc w finansowaniu działalności charytatywnej Kościoła. Z analizy kwalifikacji prawnej instytucji sponsorship w polskim systemie prawnym wynika, że jest to instytucja niezdefiniowana w prawie. Nie można jej mylić ani z umową darowizny, ani umowy sponsoringu. Instytucja sponsorship może być nowym sposobem finansowania instytucji charytatywnych w Polsce.

Słowa kluczowe: sponsorship, sponsoring, darowizna, umowa nienazwana, finansowanie charytatywnych dzieł

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