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LEGAL DETERMINANTS FOR RUNNING A PARISH BASED ECONOMIC ACTIVITY

The running of the business by a parish is a current subject. Especially after 1989, we can see an increase of activity in parish economies. The renting of rooms, lease of land, lending of the church tower for mobile communications as well as language schools run by the parish, confirm the significant corporate activity in the running of the business. Furthermore it should be added that beside the offerings of the faithful and state subsidies, this economic activity forms the third pillar of the financing of the Catholic Church in Poland.

The legal basis for such an activity is the Constitution of Poland¹. The principle of equality towards the law was formulated in art. 32, and the principle of equality given to churches and other religious organisations was formulated in art. 25 section 1. It is especially worth noting that art. 20 and 22 of the Constitution, sets out the basis of the principle of economic freedom². This principle is reflected in the law on the freedom of economic activity³. However, in relation

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¹ The Constitution of the Republic of Poland of 2nd April 1997 (as published in Dz.U. No 78, item 483).

² More: R.W. K a s z u b s k i, J. K o ł k o w s k i, *Wolność gospodarcza w świetle Konstytucji RP*, „Głosa” 6 (2000), p. 6-7, they emphasize the importance of economic freedom as so called public law entity. See also: S. B i e r n a t, *Podjęmowanie i prowadzenie działalności gospodarczej – wolność gospodarcza de lege lata i de lege ferenda*, „Przegląd Prawa Handlowego” 9 (1994), p. 9-11.

³ See Art. 6 sec. 1 ustawy z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej (Dz. U. 2004, Nr 173, poz. 1807 with changes) [hereafter: u.s.d.g.].

to the Catholic Church these acts are: the Concordat between the Holy See and the Republic of Poland⁴, and the law governing the relationship between the State and the Catholic Church in Poland⁵.

The latter explicitly allows running of a business by the institute of the Catholic Church⁶. Appropriate confirmation is stated in the can. 1259 Code of Canon Law⁷ and in the Instructions of the Polish Bishops' Conference on the management of church property⁸.

Undoubtedly, the parish that wants to run an economic activity, steps out of the range of *sacrum*, and becomes an entrepreneur⁹ and is subject to the general rules of the market game. Therefore a church legal person is subject to the same laws which govern the economic activity of state legal persons. This however, is not always met with understanding¹⁰. There is need to think that the guilt lies with stereotypical thinking, a lack of knowledge or even bad media concerning the legal conditions of the Catholic Church in Poland. One solution is to set up commercial law¹¹, associations or foundations, with members who are church legal persons authorised to run business and whose income is forwarded to the statutory activities of the parish.

⁴ Art. 4 sec. 2 Konkordatu między Stolicą Apostolską i Rzeczpospolitą Polską z dnia 28 lipca 1993 r. (Dz. U. 1993, Nr 15, poz. 318) [hereafter: Konkordat].

⁵ Art. 55 sec. 1 ustawy z dnia 17 maja 1989 r. o stosunku Państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej (Dz. U. z 1989 r., Nr 29, poz. 154 with changes) [hereafter: u.s.p.k.k.]. Subject of the article is legislation regarding the Catholic Church. Therefore, the regulations other religious organizations will be skipped.

⁶ Art. 40 pt. 6-7 i art. 55 sec. 3 u.s.p.k.k.

⁷ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, 25.01.1983, AAS 75 (1983), sec. II, p. 1-317; *Kodeks Prawa Kanonicznego*. Przekład polski zatwierdzony przez Konferencję Episkopatu, Poznań 1984 [hereafter: Code/83].

⁸ Konferencja Episkopatu Polski, *Instrukcja Konferencji Episkopatu Polski w sprawie zarządzania kościelnymi dobrami materialnymi*, working document not published in the author's possession, pt 3.19 [hereafter: i.k.e.p.].

⁹ The concept is now used to mean a physical person or legal person without commercial companies, which professionally undertakes on its own behalf and carries out economic activity as defined in of the law of business. C. K o s i k o w s k i, *Prawo działalności gospodarczej. Komentarz*, Warszawa 2002, p. 23.

¹⁰ See M. T r z e b i a t o w s k i, *Parafia a działalność gospodarcza*, „Monitor Prawny Proboszcza” 2 (2011), p. 8-9.

¹¹ One example of limited liability company is St. Adalbert's Printing House in Poznań. Up till now it is the oldest Catholic publishing house in Poland.

It needs to be noted that there is shortage in the doctrine of religious and canon law, of broader discussing ecclesiastical legal persons who undertake an economic activity. Although they were undertaken, they concern themselves with issues relating to exemptions and tax reductions¹². Therefore the problem with which this article is concerned, may be expressed by the following question: What is the legal basis for the running of an economic activity by the parish? The purpose of this article is to show these rights and an indication of the possibility of their development.

1. LEGAL PERSONALITY OF THE PARISH

The starting point for beginning of the running of the business by the parish, is to have legal personality¹³. The legal basis for the legal personality is stated in the Constitution of the Republic of Poland¹⁴, the relation of the State law to the Catholic Church in Poland¹⁵ and Concordat¹⁶. The Republic of Poland in article 4 of Concordat, recognised the legal personality of the Catholic Church, not only in Poland as a whole, but also as the legal status of all personal and territorial ecclesiastical institutions¹⁷. The relation of the State law to the Catholic Church in art. 5-14 exhaustively listed the existing organisations of the Church with civil legal personality and the bodies representing them and set out the conditions that need to be achieved in order to obtain a civil personality by other church legal persons¹⁸.

¹² See B. P a h l, *Majątek Kościołów i innych związków wyznaniowych. Zasady opodatkowania*, Olsztyn 2008; M. T y r a k o w s k i, *Opodatkowanie dochodów Kościoła katolickiego w Polsce*, Warszawa 2005.

¹³ See art. 4 u.s.d.g.

¹⁴ Art. 25 sec. 4 *in fine*.

¹⁵ Art. 7 sec. 1 pt 5.

¹⁶ Art. 4 sec. 2.

¹⁷ That is to say those dated 23th of May 1989, i.e. the date of enactment u.s.p.k.k. featured in the last print issued by listed entities dioceses and clergy or church in order statistical survey or complex religious province as of 31 December 1988, the Office for Religious Affairs. If the juridical person was not included in the above-mentioned documents, the authority of the Church was to submit a list of appropriate government authorities within 6 months from the date of enactment of the Act (See Dz. U. 1989, Nr 29, poz. 154 with changes).

¹⁸ The statutory juridical persons directory. See H. M i s z t a l, *Osobowość*

It should be noted that the enumeration of religious persons cannot be considered as completed because the law allows to institute the new legal persons. The setting up of new parishes, their removal and implementing changes belongs solely to the competence of the diocesan bishop. This authority is not entitled to the coadjutor bishop, assistant, or Episcopal Vicar General, or in the event of difficulties or vacancy to the Episcopal see, a temporary steward of the diocese or the diocesan administrator. Before taking action of an installation of the parish or changes to its boundaries, the diocesan bishop should listen to opinion of the presbyteral council¹⁹. The parish legally installed has the church and legal personality by the law itself. However, civil-legal personality is acquired in cycle of the notification of the installation, addressed by the diocesan bishop to the competent authority of the government, which is a voivodeship²⁰. The notification should include, among others: the name of the ecclesiastical juridical person, its headquarters and with regard to people, a range limitation of the territorial area of its operation²¹. A copy of this notification with together with the receipt, is the proof of having legal personality²². In the event of changes of boundaries or of the parish offices as well as in the event of a merger, division or dissolution, the competent authority is the voivodeship²³. In Poland, there are currently 10.114 parishes of the Roman Catholic rite which have a civil-legal personality²⁴.

Apart from the above conditions of obtaining legal personality it should also be noted that on the grounds of article 35 of the relation of State law to the Catholic Church, in order to run economic activity, parishes can set up associations on the grounds of the Associations law²⁵. The applicant in this case is the competent ecclesiastical

cywilnoprawna Kościołów i innych związków wyznaniowych, in: *Prawo wyznaniowe*, ed. A. Mezglewski, H. Misztal, P. Stanisz, ed. III, Lublin 2011, p. 143-152.

¹⁹ C. 515 § 2 Code/83.

²⁰ Art. 4 sec. 2 Konkordatu.

²¹ Art. 13 sec. 3 u.s.p.k.k.

²² Ibidem, sec. 5.

²³ Ibidem, sec. 2.

²⁴ Konferencja Episkopatu Polski, *Podział administracyjny Kościoła w Polsce*, in: <http://www.episkopat.pl/?a=kosciol, strona,1.html> [dostęp: 29.11.2012].

²⁵ Ustawa z dnia 7 kwietnia 1989 r. Prawo o stowarzyszeniach (Dz. U. 2001, Nr 79, poz. 855 with changes).

authority. This person acquires legal personality from the date of registration in the National Court Register and therefore it becomes a juridical personality. Although the associations as institutions are non-profit associations of persons²⁶, they may however carry out economic activities but the income from these activities is only for the achievement of statutory objectives and cannot be income to the members of the association²⁷.

It should also be added that in order to run an economic activity, parishes can set up foundations²⁸. The basis of their activities is art. 58 of the relation of State law to the Catholic Church and the Foundations act²⁹. However, foundations may carry out the activity but the income must be dedicated to achieve the purposes of the foundation³⁰.

In this way set up parishes and other established legal entities have the civil ability without limit³¹ and equality to run economic activities as state legal persons³². It should be noted that economic activity is a secondary matter of the operation of the parish. Its primary purpose is pastoral care, which the parish priest serves under the higher authority of the diocesan bishop³³.

²⁶ Ibidem, art. 2 sec. 1.

²⁷ Ibidem, art. 34.

²⁸ According to the prevailing opinion on the grounds of the Foundations Art, economic activity may not be essential, but the alternative or incidental effects of the foundation. It is justified to be non-profit organisation. Therefore, the foundations that carry out only economic activities are treated as a "pathology" and "perversion of the foundation". See H. C i o c h, *Fundacje prowadzące działalność gospodarczą*, „Państwo i Prawo” 2 (1989), p. 75-84. In the light of the legal provisions of the Association Act, the economic activity in the case of association – such as foundation – is a „strange body”. See H. I z d e b s k i, *Fundacje i stowarzyszenia*, Warszawa 1996, p. 116-117.

²⁹ Ustawa z 6 kwietnia 1984 r. o fundacjach (Dz. U. 1991, Nr 46, poz. 203 with changes).

³⁰ Ibidem, art. 5 sec. 5.

³¹ If there are limits of economic activities carried out by the parish, it is a result of the nature of ecclesiastical institutions. Cf. art. 21 ust. 1 Konkordatu.

³² R. S k u b i s z, M. T r z e b i a t o w s k i, *Kościelne osoby prawne jako przedsiębiorcy rejestrowani*, „Przegląd Prawa Handlowego” 3 (2002), p. 12.

³³ C. 519 Code/83.

2. CONCEPT AND TYPES OF ECONOMIC ACTIVITY

The concept of economic activity is central for us. This is a consequence of the fact that separation of economic activity from the charity is not easy³⁴. This is important mainly for the purpose of property taxes³⁵ and for economic activity. Canon law does not define the concept of economic activity, but refers it to the civil law³⁶. The concept of economic activity" is described in art. 2 about the freedom of economic activity art³⁷, according to which: "Economic activity is a gainful production, trade activity, building trade, service activity, prospecting exploration and extraction of minerals from deposits, as well as the professional activity carried out in an organised and continuous way".

Although other regulations use the term "economic activity", it should nevertheless be considered as *lex specialis* in relation to the precept of the freedom of economic activity art. It is worth emphasising the point of the definition included in the regulation-tax ordinance art³⁸, according to which an economic activity is every gainful activity according to the meaning of the provisions included in the freedom of economic activity art, including the performance of professional services, as well as any other gainful activities carried out in its own name, its own account or in a third party's account, even when other laws do not include the activity as an economic activity or the person carrying out such activities as entrepreneurs.

The literature of the law indicates that the determinants of economic activity are:

- a) The economic nature of the business,
- b) Profit orientation,

³⁴ This case was examined by the judgment of the Supreme Administrative Court dated 27th of September 2005 (FSK2149/04). In this case the classification was considered as a private healthcare facility, run by order and, in particular, whether the above-mentioned activities of the charity and care activities exclude it as a economic activity.

³⁵ Art. 1 ustawy z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych (Dz. U. 2010, Nr 95, poz. 6.13).

³⁶ C. 1259 Code/83.

³⁷ See u.s.d.g.

³⁸ Art. 3 pt 9 ustawy z dnia 27 sierpnia 1997 r. – ordynacja podatkowa (Dz. U. 1997, Nr 137, poz. 926 with changes).

c) Autonomic nature of activity³⁹.

Determination of gainful activity as one of the indicators of economic activity should be considered as an indication of direction, assuming that the purpose of economic activity is profit (eg, renting of parish premises). It should be emphasised that the "business purpose" does not have to be associated with profit purpose (provision of care and education etc.). This means that an economic activity can also carry out entities whose primary purpose is not running a business⁴⁰. This is the case of parishes and other entities established by it, whose purpose is to support the principal activity (statutory) of the parish.

Undoubtedly, the economic activity undertaken by the parish or by foundations, association, or limited liability company performs the function supported by statutory activities.

It is true that it can be carried out by the parish in typical economic fields such as agriculture, manufacturing, or even transport, this activity however usually covers areas which are often connected with religious worship, or fields which by their nature are not always economic in nature⁴¹. The first group includes for example funeral services, lease and rental. The latter includes the following activities:

a) setting up and running of educational institutions, including kindergartens and various types of schools⁴²;

b) setting up and running of suitable care and charitable institutions, including institutions for orphans, the elderly, people with physical or mental disabilities, and other categories of people in need of care, hospitals and other medical facilities and pharmacies, nurseries, orphanages, dormitories and shelters⁴³;

c) setting up and possession of publications, printing companies, printing, publishing and distribution of all publications, including

³⁹ This position was also confirmed by the Supreme Court in the case law, see resolution form 21th of April 1989 r., sygn. akt III CZP 24/89, OSN 2-3 (1990), poz. 45.

⁴⁰ See M. Z d y b, *Prawo działalności gospodarczej. Komentarz*, Kraków 2000, p. 43.

⁴¹ S k u b i s z, T r z e b i a t o w s k i, *Kościelne osoby prawne*, p. 10.

⁴² Art. 14 Konkordatu; art. 20 sec. 1 u.s.p.k.k; art. 21 sec. 1 ustawy z 17 maja 1989 r. o gwarancji wolności sumienia i wyznania (Dz. U. 1989, Nr 29 poz. 155 with changes) [hereafter: u.g.w.s.w.].

⁴³ Art. 39 u.s.p.k.k. i art. 24 sec. 1 u.g.w.s.w.

newspapers, books and printed materials, related to the mission of the Catholic Church, issued by own sources of mass media programs, the establishment and usage of radio equipment for broadcasting radio and television programs⁴⁴;

d) production and acquisition of objects and items needed for cult and religious practices⁴⁵;

e) executing of sacred investments and other ecclesiastical investments⁴⁶;

f) establishing, expanding and managing of burial cemeteries⁴⁷;

g) acquiring, using and disposing of movable and immovable property and the acquisition and disposal of property rights⁴⁸.

In consequence, the parish which undertakes and executes the above-mentioned economic activities obtains entrepreneurs qualifications⁴⁹.

The above mentioned legal capacity depends on the execution of these activities professionally, in its own name and in its own account⁵⁰. After fulfilling these requirements parish then becomes an entrepreneur.

The effect in the case of the field of such an activity (even in the renting of rooms) has the status of economic affairs⁵¹. The purpose of expenditure does not matter as it's treated in the same way as income⁵². Even one typical feature of economic activity is considered permanent and is the essence in the repetition of certain actions⁵³. After fulfilling all these conditions, the parish then becomes an

⁴⁴ Art. 20 sec. 1 Konkordatu, art. 46-51 u.s.p.k.k i art. 25 u.g.w.s.w, a także art. 8 prawa prawnego (Dz. U. Nr 5, poz. 24 with changes).

⁴⁵ Art. 19 sec. 1 pt 9 u.g.w.s.w.

⁴⁶ Art. 41-44 u.s.p.k.k. i art. 19 sec. 1 pt 6 u.g.w.s.w.

⁴⁷ Art. 45 u.s.p.k.k. i art. 19a sec. 1 u.g.w.s.w.

⁴⁸ Art. 23 Konkordatu; art. 52-59 u.s.p.k.k. i art. 19 sec. 1 pt 7 u.g.w.s.w.

⁴⁹ More: K. K r u c z a l a k, *Pojęcie przedsiębiorcy i jego znaczenie w obowiązującym prawie*, „Rejent” 3 (1998), p. 11-22.

⁵⁰ Art. 3 pt 9 u.o.p.

⁵¹ See J. N a w o r s k i, *Pojęcie sprawy gospodarczej sensu stricto*, „Przegląd Prawa Handlowego” 8 (1999), p. 4-6.

⁵² See J. S o m m e r, K. S t o g a, R. P o t r z e s z c z, *Prawo działalności gospodarczej. Komentarz*, Warszawa 2000, p. 17-18; M. Z d y b, *Działalność gospodarcza i publiczne prawo gospodarcze*, Zakamycze 2001, p. 25; A. K o ż u c h, *Działalność gospodarcza organizacji publicznych*, Białystok 2003, p. 9.

⁵³ K o s i k o w s k i, *Prawo działalności gospodarczej*, p. 16.

entrepreneur. As a result of it, the issue in the field of such an activity (even in the rental field) fulfills other conditions with art. 479 § 1 k.p.c. – as a position of economic affairs⁵⁴.

3. LEGAL PROCEDURES IN ESTABLISHING ECONOMIC ACTIVITY

The economic activities of the parish, as well as other economic activities cannot be set up in tacit way. Undertaking needs to comply with certain conditions as described in law – to start a economic activity – it cannot be in conflict with the law.

Undertaking economic activity involves a number of interrelated processes among which the most important is the founding process, which means the organisation of a new, economically isolated, organisationally and legally founded by the person who was not previously an entrepreneur.

Activities required to set up an economic activity:

a) *The registration in the National Court Register*

The registration in the National Court Register (hereafter NCR) is a legal condition necessary to acquire the legal personality⁵⁵. In the event of ecclesiastical juridical person however, this provision does not apply because the parish acquires legal personality by the registration, not to a general court register but the register of churches and religious associations led by the responsible Minister of Internal Affairs⁵⁶. The legal basis for this is stated in article 3 the national court register art in relation to section 7 point 5 of the law governing the relationship between the State and the Catholic Church in Poland. In consequence, it may seem that in the course of economic activity, the parishes cannot prove their lawful presence within the legal system. In the literature, it can be noted discussion about the status of the entrepreneur and the registration in the Register of Entrepre-

⁵⁴ More: N a w o r s k i, *Pojęcie sprawy gospodarczej sensu stricto*, p. 1-13.

⁵⁵ Art. 3 i 49-50 ustawy z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym (Dz. U. 1997, Nr 121, poz. 769 with changes).

⁵⁶ Art. 34 sec. 2-3 u.g.s.w. See S. B i e r n a t, A. W a s i l e w s k i, *Ustawa o działalności gospodarczej. Komentarz*, Kraków 1997, p. 47-48.

neurs may be noted⁵⁷. According to the doctrine, it is not possible to be in trade without registration because of the lack of a registration number which causes such activities to be purely theoretical⁵⁸. This state is incorrect and requires an appropriate adjustment with the National Court Register⁵⁹. When the parish however, undertakes an economic activity for itself, set up by the foundation or an association, registration with the National Court Register is mandatory.

b) *Obtaining a REGON statistical number*

Every economic activity should have an official national register of economic entities⁶⁰ identification number. The REGON register is a currently updated collection of information about the entities of the national economy which is maintained in a computer system in a central database and in local databases. It is used for statistical purposes and for contacts with other partners, the tax office, bank and insurance companies.

c) *Opening a bank account*

The obligation to open a bank account is due to non-cash provision of the trade act, and the business law. The economic operator is obliged to repay the bank in every event, if ever the party to the transaction is another operator and if a one-time payment exceeds 3000 or 1000 euro or if the sum of the payments in the previous month exceeds the equivalent of 10 000 euro.

The opening of a bank account takes place at the request of the operator. For income tax purposes, the notification details including the name, address and place of the bank must be given to the Tax

⁵⁷ See Skubisz, Trzebiatowski, *Kościelne osoby prawne*, p. 16; Kosikowski, *Prawo działalności gospodarczej*, p. 21 i 24; P. Bielski, *Nowe prawo przedsiębiorców*, Gdańsk 2000, p. 20; tenże, *Podstawy organizacji i funkcjonowania rejestru przedsiębiorców – zagadnienia wybrane*, „Rejent” 2 (2000), p. 35; Zdyb, *Prawo działalności gospodarczej*, p. 52.

⁵⁸ Sommer, Stroga, Potrzezcz, *Prawo działalności gospodarczej*, p. 45-46.

⁵⁹ A. Pawłowski, *Podjęmowanie działalności gospodarczej przez parafię*, „Monitor Prawny Proboszcza” 4 (2012), p. 4; M. Jasiakiewicz, *Głosa do wyroku Sądu Najwyższego z dnia 27 lipca 2000 r. IV CKN 88/00*, „Rejent” 1 (2005), p. 137.

⁶⁰ Art. 41 sec. 1 pt. 1 ustawy z dnia 29 czerwca 1995 r. o statystyce publicznej (Dz. U. 1995, Nr 88, poz. 439 with changes).

Office. Regarding the management of ecclesiastical goods in order to differentiate pastoral activity from economic activity by a separate bank account⁶¹.

d) *Business Registration in a Tax Office*

Although the parish as a legal person does not have a number NCR, documenting the undertaking of its economic activity, it is still obliged under the principles of identification of taxpayers records art, to submit mandatory⁶² evidence. As a payer, the parish (for the purpose of tax liability related to economic activity and as the payer of social security contributions for the employment of workers) is required to make a notification containing the identification of its name, address, REGON identity number, a list of bank accounts, the address of record keeping and accounting and the object of the activity (Article 5. 3 of the said Act).

e) *Application of persons to ZUS (Social Security) for national insurance*

A parish carrying out economic activities, under the article 33 of the Act on Social Insurance System⁶³, is required to report to the Department of Social Security persons covered by pension insurance, disability pension and health insurance. Persons employed on the grounds of contracts of employment as well as persons carrying out work on the grounds of order contract or agency agreement should also be reported. The parish being the payer is required to submit a statement of account to the Social Security DRA. This needs to be submitted in writing to the insured every month.

The realisation of these activities is one of the factors that helps in the preparation of a lawful operated activity. The Polish Bishops' Conference Instruction regarding the management of ecclesiastical goods confirms that in this regard the field of economic activity should meet all the requirements as described by the Polish law⁶⁴.

⁶¹ Pt 3.8 i.k.e.p.

⁶² Ustawa z dnia 13 października 1995 r. o zasadach ewidencji i identyfikacji podatników i płatników (Dz. U. 1995, Nr 142, poz. 702 with changes).

⁶³ Dz. U. 1998, Nr 137, poz. 887.

⁶⁴ Pt 3.21 i.k.e.p.

4. BUSINESS TAX

Every juridical person, including the parish, carrying out an economic activity is a taxable person based on goods and services⁶⁵. These provisions provide a number of tax exemptions, of both subjective and objective character. It is important for an entrepreneur to determine which conditions he will use to calculate taxation on goods and services and whether he will qualify for the tax exemptions⁶⁶.

The doctrine of law distinguishes between:

– a statutory non-economic activity (that is, one which has a non-profit and non-commercial character and has a non-profit character and strives to achieve the goals of the relevant Church)⁶⁷

– an economic activity (which is a gainful activity) In statutory non-economic activities, juridical persons are not required to keep records required by the provisions of the Tax Code. The statute, however, has an appropriate part for the purpose of : religious cult, educational, scientific, cultural, and charitable purposes and for the conservation of monuments, carrying out catechetical practice, the field of sacral investment: building, expansion and reconstruction of churches and chapels, adapting other buildings for sacred purposes, and other investments intended for catechetical centres and charitable establishments, which allows juridical persons to be free from corporate income tax⁶⁸. Similar conditions apply to the income of companies whose only shareholders are juridical persons – in the part intended for the purposes set out in section 4 a point. b (the corporate income tax art.).

⁶⁵ Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Dz. U. 2004, Nr 54, poz. 535 with changes) [hereafter: VAT].

⁶⁶ Pt 3.33 i.k.e.p.

⁶⁷ In the Catholic Church the statutes of the legal entity are defined in Code/1983 and provisions contained in the statutes of the various juridical persons such as the Statute of the Archdiocese of Lublin.

⁶⁸ Art. 17 sec. 4a pt a i b. ustawy z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych (Dz. U. 2011, Nr 74, poz. 397, tekst jedn.). It is worth noting that the regulation of art. 17 of the Law is the ecclesiastical juridical persons better than, that which was contained in the ecclesiastical laws, as in the Law on corporation tax has no deadline for spending the income on the specified objectives. However, from the art. 55 sec. 3 u.s.p.k.k. showed that income had to be spent in the fiscal year or the year following.

Significant in this case is the adjudication of the Regional Administrative Court in Cracow dated 4th of June 2008, sygn. act I SA/Kr 98/08, which sets out that the statutory non-economic activity of the Church is any non-business activity and operation which results from the very nature of the Church and its specific activity.

The letter from the Ministry of Finance, no PO 4/N-722-86/94, dated 26th of March 1994, which was addressed to the Chambers and Tax Offices, explained that the activities of juridical persons which consist of the running of schools, nurseries, dormitories, or boarding schools, as well as care treatment centres, nursing homes, centres with medical facilities and educational institutions cannot be considered as an economic activity, unless the statute sets out a profit character. It can however be stated that the statutory activities of the Catholic Church belong not only the activities of a religious cult, but are also charitable, caring, educational and scientific⁶⁹.

In the event of running an economic activity (e.g. a pharmacy, or a greengrocers) the parish is then subject to VAT taxation rules. VAT rates are set at 22% or there may be exemption from taxation⁷⁰ in accordance to the subject of economic activity⁷¹. In the event when the economic activity is the sale, taxation will not apply if the value does not exceed the taxable sales total, in the previous fiscal year, of the amount of Polish national currency expressed as the equivalent of 10 000 euro⁷².

CONCLUSION

It is hard to show all the difficulties related with the economic activity of the parish within a brief presentation of the issue. The purpose of the article was to show the rights of the parish in the running of an economic activity. The parish under art. 32 and 20 of the Constitution of the RP, and art. 4 section 2 of Concordat and art. 55 section 3 the law governing the relationship between the State and the Catholic Church in Poland, has the legal personality and can

⁶⁹ *Pismo Ministerstwa Finansów*, „Glosa” 4 (1995), p. 20.

⁷⁰ Art. 41 sec. 1 VAT.

⁷¹ Art. 41 sec. 1 VAT.

⁷² Art. 113 sec. 1 VAT.

act as a entity of commercial law. It should however be underlined that the economic activity carried out by the parish is a secondary object of the operation and the use of these rights acts to support the implementation of the first purpose. In this way, the parish as a community of believers proves that it can not only manage ecclesiastical goods properly, but also serves by increasing positions of employment, parish community integration and cooperation between parishes. Moreover the parish being a member of the commerce qualifies as entrepreneur and can use the legal instruments which are typical for business, for example non-economic relief for statutory activities.

Analysis of the current regulations regarding the undertaking and the implementing of a parish economic activity does not give grounds for a critical appraisal. It seems unclear as to why there is a lack of parish registrations on the NCR register.

This regulation should be addressed at the meetings of the Joint Commission between the Government and the Episcopal or Concordat Commission, to make attempts to amend the Law on the National Court Register. A good role model in this regard, may also be provision of law on the guarantees of freedom of conscience and religion, which clearly defines the requirements of the Statute of the church and religious organisation, in relation to organisational entities with legal personality. The unclear regulation states that *de lege lata* is mandatory, infringes the principle of certainty of transactions and is also not good for the perception of the Catholic Church as an institution of public trust.

The lack of social understanding relating to the implementation of parish economic activity activities seems appropriate to justify the setting up of foundations or associations. In this way the blurring of the boundaries between business and parish confessional can be avoided.

Prawne uwarunkowania do wykonywania działalności gospodarczej przez parafię

S t r e s z c z e n i e

Celem artykułu było ukazanie uwarunkowań prawnych parafii w zakresie wykonywania działalności gospodarczej. Parafia na mocy art. 32 i 20 Konstytucji RP, art. 4 ust. 2 Konkordatu oraz art. 55 ust. 3 ustawy o stosunku Państwa do Kościoła Katolickiego w RP posiada osobowość prawną i może występować jako organ prawa handlowego. Stosowne potwierdzenie stanowi w tym względzie kan. 1259 KPK/83 oraz pkt 3.19 Instrukcji Konferencji Episkopatu Polski w sprawie zarządzania kościelnymi dobrami materialnymi.

Podkreślić należy, że działalność gospodarcza wykonywana przez parafię jest drugorzędnym przedmiotem jej funkcjonowania, a korzystanie z tych uprawnień pełni funkcję wspierającą w realizacji jej celu pierwszorzędnego. Tym samym parafia, jako wspólnota wiernych, dowodzi, że nie tylko właściwie zarządza majątkiem parafialnym, lecz także służy powiększaniu miejsc pracy, integracji społeczności parafialnej, jak i współpracy między parafiami. Znamienny jest również fakt, że parafia będąc uczestnikiem obrotu gospodarczego, uzyskuje kwalifikacje przedsiębiorcy i może wykorzystywać typowe dla przedsiębiorcy instrumentarium prawne, jakim są m.in. zwolnienia z tytułu niegospodarczej działalności statutowej.

Analiza obowiązujących regulacji prawnych dotyczących podejmowania i wykonywania działalności gospodarczej przez parafię, nie daje podstaw do ich krytycznej oceny. Tym niemniej niejasny wydaje się brak numeru rejestru KRS przez parafię. Stąd rodzi się postulat *de lege ferenda*, aby problem uzyskania numeru KRS stał się przedmiotem debat Komisji Wspólnej Rządu i Episkopatu lub Komisji Konkordatowej, a w konsekwencji przyczynił się do próby nowelizacji ustawy o Krajowym Rejestrze Sądowym. Dobrym wzorem, w tym zakresie, mogą być również przepisy ustawy o gwarancjach wolności sumienia i wyznania, które jasno określają wymogi statutu Kościoła i związku wyznaniowego dotyczące jednostek organizacyjnych mających osobowość prawną. Trwanie przy niejasnej regulacji, która *de lege lata* obowiązuje, narusza zasadę pewności obrotu, a także nie wpływa dobrze na postrzeganie Kościoła katolickiego jako instytucji zaufania publicznego.

Odnosnie do braku zrozumienia społecznego – jakim jest wykonywanie działalności gospodarczej przez parafie – słuszne wydaje się powoływanie fundacji lub stowarzyszeń do jej prowadzenia. W ten sposób można uniknąć zatarcia granic pomiędzy działalnością gospodarczą a konfesyjną parafii.

Key words: economic activity, legal personality of the parish, entrepreneur, business taxation

Słowa kluczowe: działalność gospodarcza, osobowość prawna parafii, przedsiębiorca, opodatkowanie działalności gospodarczej