

### Attachment No. 3 Summary of academic accomplishments in English

1. Name and surname: Joanna Dominowska

2. Diplomas, academic and scientific degrees:

2002 – Master of Law [*magister prawa*], Faculty of Law and Administration of the University of Warsaw, diploma with distinction

2002 – 2003- Centre for American Law Studies, University of Warsaw, Centre for American Law Studies Diploma

2006 – Ph.D. degree in Law, doctor's dissertation: Effect of interpretative judgments of the Constitutional Tribunal on the judicial decisions and application of law in civil cases, supervised by prof. Krzysztof Pietrzykowski, reviewers: prof. L. Morawski and prof. A. Zieliński

2005 – Attorney-at-law registered with the Warsaw Bar Association

2015 – Completed training in the area of mediation administered by the Warsaw Bar Association and was awarded the qualification of a mediator

3. Information on employment at academic entities:

2002-2006 – completed full-time doctoral studies at the Faculty of Law and Administration at the University of Warsaw, as part of which I was a lecturer of the civil law course

2006 – 2008 – lecturer at the Faculty of Law and Administration at the University of Warsaw

2005-2008 – Head of the British Law Centre at the Faculty of Law and Administration at the University of Warsaw

2008- present – Assistant Professor in the Institute of Political Economics, Law and Economic Policy, College of Management and Finance at the Warsaw School of Economics.

4. Specification of the achievement following from art. 16 par. 2 of the act of 14 March 2003 on the academic degrees and the academic title and the degrees and title in the area of art (Dz.U. 2016 item 882 as amended in Dz.U. of 2016 item 1311):

a) Title of academic achievement:

As my academic achievement in the academic discipline of law I indicate the monograph: Business activity conducted by foundations – legal analysis [*Prowadzenie*



*działalności gospodarczej przez fundacje – studium prawne*], Wolters Kluwer 2017, my editorial reviewer was prof. A. Kidyba

c) Summary of the academic objective of my work

Monograph entitled "*Business activity conducted by foundations – legal analysis*" is the result of my academic work after I was awarded the title of Ph.D. in Law and is based on many years of studies of the Polish and international laws on foundations and more broadly of the laws on the so-called third sector organizations (in Anglo-Saxon systems more often referred to as the non-profit sector).

The objective of my work is to answer the question whether the foundations in Poland are permitted to and whether they should conduct business activity, and if so, to what extent: should this be only a subsidiary activity or also activity which is included in its statute as the objective of the foundation. In view of the above, in the first part of the monograph I examined how various legal systems approach the issue of business activity conducted by foundations, I then examined models of business activity in the systems where it is permitted. Under the laws currently enforced in Poland and in the majority of legal systems it is permissible for the foundations to conduct business activity, and thus the main part of my work concerns the function and significance of business activity for the operation of a foundation. Moreover I have considered whether undertaking and conducting business activity should affect public privileges (including in particular fiscal privileges) of a foundation if such are granted to foundations in a given legal system. The objective of my research was also to present a foundation from the perspective other than traditional (at least in Poland), i.e. as one of the possible forms of conducting of business activity.

My research resulted in the conclusion that foundations increasingly undertake business activity and that its significance for the foundation as such as well as for the national economies and transnational economies continues to increase. However the characteristics and specific nature of this activity have yet to generate a wider resonance with the Polish legislator, the fact that this monograph aims to change.

Last objective of the monograph was to propose, on the basis of the conducted research, the introduction of systemic changes to the Polish law taking into account the fact that the foundations may conduct business activity not only as a source of profit but

also as one of their statutory objectives. In the summary I also provided my comments *de lege ferenda*, firstly as regards the necessary changes to the current law on foundations and secondly as regards the future model of separate category of commercial foundations.

Although the subject matter of the research concerned private law foundations, one cannot limit oneself only to the analysis of private law regulations. It was also necessary to consider the public law aspects including the constitutional law – as regards the place of foundation in the legal system, administrative law – as regards public supervision over the foundations as well as the tax law as regards the effect of the tax solutions and public benefits systems, which affect the decisions and development of a foundation's business activity. Furthermore, the main part of my monograph deals with private law issues: comparison of foundations with other entities, structure of a statute, significance of the foundation's objective, internal organization of the foundation conducting business activity, forms of enterprises conducted by a foundation, nature of cooperation with other entities as part of a wider commercial framework, issues of liquidation and bankruptcy as well as designation of the assets of the foundation. Statistical research constitutes a vital component of my work – in order to numerically present the significance of business activity for general economy and for the foundation as such in Poland and abroad. I used the legal and comparative method in the entire monograph, comparing the European and worldwide solutions for the issues presented in particular chapters, and most of all for the fundamental issue for this monograph – whether the foundations should be permitted to conduct business activity.

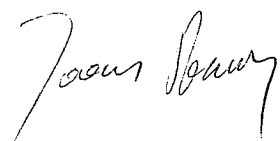
I also compared whether permissibility of establishment of a foundation for private purposes always needs to be related to the permissibility of business activity and the solutions adopted in various legal systems as regards the permissibility of public privileges for foundations, which conduct business activity. From this point of view the concept of the so-called related and unrelated business activity was very important.

In chapter 2, I also applied the comparative (systemic) method placing the foundation in a legal system and comparing this capital legal person to other legal persons, including persons from outside the Polish legal system (trusts). Conducting business activity used to be synonymous with corporations, in particular with companies.

However non-corporate institutions (which are not owned by shareholders) also play an important part in the world economy. The subject matter of the presented monograph consisted in the presentation of the importance of a foundation in commercial dealings. I analyzed various forms of foundations participating in the economy and most of all I analyzed the business activity conducted by a foundation.

Legal structure of a foundation has exceptional advantages for conducting a business activity. Foundations prove to be an excellent choice in the situations of contractual deficiency, which I discussed in chapter 2.5. Moreover the permanent nature and stability of the objective of a foundation may prove to be very useful for those entrepreneurs who would like to ensure realization of a specific objective.

In chapter 2 I also examined the role that a foundation plays in a state and society, in particular in the cases of contractual deficiency. From this perspective it was crucial to answer the question whether various social needs for the purposes of which foundations all over the world are established should be limited, as is the case in Poland, to the realization of the objectives that benefit the general public. This issue is especially important in post-communist countries. Whereas the economies of these countries fairly quickly and smoothly adopted or reembraced the institution of a company, the foundations continue to be marginalized. Chapter 2.4 deals with the issue in more detail. Therefore my analysis in this chapter concerned the issue of whether the foundations could and should take over more of the responsibilities of the state and whether a strict approach to the possibility of conducting business activity and in general whether too narrow possibilities of financing affect the development of foundations in the post-communist countries. In this chapter and then consequently in the following chapters I pointed to the thesis that a legislator needs to adopt a decision regarding the permissible objectives of a foundation. If he deprives foundations of the opportunity to conduct business activity he should then introduce a number of facilities to make it easier for them to obtain financing in another way or to obligate the founders to provide the initial capital in such amount that makes it possible to realize its statutory objectives. Otherwise, foundations which rely only on irregular and accidental financing will not be able to plan and administer large, serious aid programs and will not be able to further develop themselves. I provided the decree of 1952 under which all foundations were



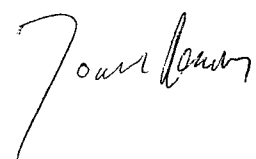
removed from the system for over 30 years, as one of the reasons why there is no tradition of foundation and charity operation in Poland.

Research has shown that as long as it is permitted in a given legal system, the foundations increasingly engage in business activity and thus in chapter 3 I presented various legal solutions concerning whether conducting business activity may constitute a statutory objective of a foundation. As part of this research, using the examples of other legal systems, in particular Danish, German and American legal systems, I showed the advantages of a legal structure of a foundation for the purposes of conducting of a business activity. I also examined the Polish system as regards the scope of permissible business activity of a foundation and how vital a part it may play in its operations. This part of considerations presented in my work aimed at showing that business activity does not need to be in competition to the statutory activity, on the contrary, it may be the source of additional funds needed to conduct its statutory activity which allows to expand its scale and sustain the operations of the organization. It is also a source of income which guarantees a much greater independence of the organization from external entities (both from public as well as private sectors). Thanks to its own sources of income, foundations need not limit their operations to perform the tasks, which the state would like them to perform. Additionally, the need to operate in free market conditions (i.e. competition, need to maintain detailed accounting) may have a material positive influence on the effectiveness of management of the organization and to contribute to the better use of resources and to the increase in work productivity.

In chapter 3, I also examined models of public privileges for foundations and models of supervision of the activities of a foundation. Two main and at the same time contradictory models of subsidizing by the state of the activities of the third sector organizations may be distinguished: subsidizing under the condition that the foundation conducts only activities preferred by the state and exemption of revenues designated for specific purposes (regardless of the source of the revenues). This issue was discussed in greatest detail in chapter 3.5 however it appears throughout the entire work as it is one of the arguments most frequently cited by the opponents of permitting the foundations to conduct business activity. It is these preferences that create the legal "environment" as well as social environment and affect the circumstances under which

the foundations decide to conduct or not to conduct business activity. It is in this area that there appears to be the biggest threat related to conducting business activity by foundations, i.e. the issue of effective guarantee that the preferential treatment is not afforded to organizations whose activities do not result in any public benefit but in the increase of capital of a small number of people connected to the foundation. It is the issue of ability to use public privileges that I indicate as one of the primary reasons for the restriction by legal systems of possibility to conduct business activity by foundations. As the state restricts the objectives that the foundation may specify in its statute, it needs to create a supervisory body to monitor whether these restrictions are observed, in particular if public privileges depend on it. Apart from the above it is in the interest of a foundation to be supervised by the state. In this respect the state needs to protect the "assets" from the persons who manage these assets or who derive certain benefits from these assets. Therefore chapter 3 concludes with examination of various models of supervision over foundations in Poland and abroad, with particular emphasis on the supervision over the foundation's business activity. The latter aspect also has material significance for the decision on conducting business activity as part of the foundation. As it turns out it is subjected to more scrutiny than any other entrepreneur. Overdeveloped supervisory body may discourage from conducting business activity. However in Poland the supervisory body is particularly ineffective, mostly because the supervisory body finds out what happens in the overseen entity almost two years later, at the same time not having any effective instruments to obtain this information earlier or to demand additional information as well as not having effective means of control and supervision.

Research conducted in the first chapters of the work proved that business activity conducted by a foundation shall be permitted a lot more frequently as one of the ways to obtain financing of the public benefit activities and that there are very few legal systems which allow for business activity to be the sole, main and at the same time statutory objective of the foundation. Therefore, in chapter 4 I have examined other roles played by business activity in the operation of typical private law foundations, which due to their greater number in the European Legal Systems I consider to be established for purposes other than business activity. As the commercial activity is not an objective then it may be the source of foundation's revenue and in such case either there is a substantive



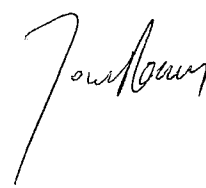
connection to its statutory objectives (related business activity) or there is no such connection. I presented business activity as means of realization of an objective (commercial or non-commercial) of a foundation, and then as means of obtaining funds to realize the objectives (commercial or non-commercial) of a foundation. In the context of business activity conducted by a foundation, in chapter 4 I also provided how to correctly specify objectives of a foundation in its statute. I also pointed both to the benefits as well as threats for the foundation in connection with its participation in commercial activities. It primarily concerns the need to adhere to the principles of fair competition on the market between entrepreneurs as well as the protection of consumer rights. Apart from that, a foundation – an entrepreneur is subject to the laws governing bankruptcy and restructuring proceedings. I also pointed to the need to include in the statute of a foundation conducting business activity the issue of future of the said business activity in the event of division, merger or transformation of the foundation. These are the issues that have not been regulated by the act on foundations which leaves these issues (as many others) to be regulated in the statute, however in the absence of such regulations it does not suggest even basic solutions, the fact that I consider to be one of the main disadvantages of the current act on foundations. I also presented possible solutions for the issue of relationship between a foundation and its management and beneficiaries, which becomes the more important the more profitable the business activity is. All these remarks lead to the conclusion that in the case where foundations expanded their business activity, it would be necessary to introduce to the Polish law separate regulations for such foundations – entrepreneurs, such as the act on commercial foundations in Denmark.

In chapter 4 I also used statistical research in order to determine what is the actual share of funds obtained from business activity in the balance sheet of a foundation and in what areas is such activity conducted. The conclusion is that the role that the business activity plays in the operation of a foundation determined the ways and forms as well as sectors of economy in which it is conducted. Where the business activity is of subsidiary nature, it usually concentrates in the areas of: culture and art, healthcare as well as social aid. Whereas the activities of purely commercial nature and at the same time not being the statutory activities are: lease and management of own or leased real



property as well as out of school forms of education and aid to children and young adults. Foundations appear and conduct business activity where there is a contractual deficiency between the parties to given economic relations consisting in e.g. asymmetry of information. This may be a variable process, where the symmetry is reinstated or after the development of mechanisms of its control, foundations supported by for-profit institutions in order to concentrate their activities (including business activity) in other areas.

Subsequent chapters focus on conducting business activity in a form that is organizationally not separated (chapter 5) and the participation of foundations in entities conducting business activity such as for example, as a partner in a partnership or a member in a capital company as well as in multi-entity business structures such as for example, in a holding (chapter 6). Thus a foundation may operate an enterprise that is not organizationally separate within its own structure. From this point of view it is vital to prepare the wording of its statute in a correct manner, appoint experienced managers to the governing bodies of such a foundation, separate assets designated for the realization of the statutory objectives from the objective which is designated for the business activity and to appoint a separate supervisory body overseeing the internal affairs of the partnership (as part of the governing bodies of the foundation). Vital and unsolved by the act on foundations is also the issue of representation of a foundation in transactions with its management board, which is the sole mandatory governing body of the foundation. I pointed to the fact that conducting business activity may generate a lot of situations where there is a threat of conflict with members of its management board, there may also be an issue of claims for compensation of the foundation against the members of its management board. It is important for the foundation to develop correct mechanisms of internal control, because as I pointed in chapter 3, the external (state) supervision in Poland does not operate effectively. I pointed to the issue of protecting the creditors of the foundation – an entrepreneur and the need to introduce to the statute the provisions on the liquidation of the foundation as well as designation of its assets after the cassation of its activities. In chapter 5 I have considered how foundation invest their assets and the tax exemptions to which they are entitled under Polish law depending on the type of capital investments. Conducting business activity provides to a





foundation its own source of income and thus affords a greater independence and not only financial independence but also decision-making independence regarding the activities of the organization and ways of realization of its statutory objectives. Generating its own profits assures independent views in ideologically vital areas, ability to continuously finance the overheads of the foundation. However it generates a risk that the foundation may lose its funds and that includes the funds which should be allocated for its statutory activities. Therefore it is important from the organizational point of view to financially separate both types of activities. Running an enterprise may in effect materially change the entire organization of the foundation.

Foundation may also participate in the commercial dealings as a part of larger group, holding or consortium structures, including as an entity managing the said structures. The German structure *Selbstzweckstiftung* is worth mentioning, as its sole statutory objective is to administer and manage capital groups. I presented the role of a foundation as a partner in partnerships, and in particular as a general partner in the limited liability partnership. Foundation may also participate in commercial dealings on the basis of the fact that it owns a part or even all of the shares or other participation units in the profits of an entrepreneur. In chapter 6.3 I have explained however that such activities of the foundation may not be considered as conducting business activity by the foundation itself as it is not conducted in its own name and on its own account.

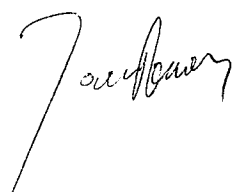
In chapters 5 and 6 I presented foundations without referring to the ideal objective, simply as a vehicle beneficial for both independent business activity as well as important for the creation of wider business structures. However it turned out that in light of the act on foundations enforced in Poland, one cannot even assign this function to the foundations. Even if a foundation in Poland is an entrepreneur, its main objective needs to be non-commercial, and in particular beneficial to the public. Only in the systems where it is possible to create fully private foundations, a foundation may be established and may operate in order to conduct business activity, although even in this case this may not be the sole objective of the foundation. Private purpose does not mean an automatic permit to establish a foundation in order to conduct business activity – Austrian system expressly prohibits such activity, notwithstanding the fact that foundations may be created for the purposes of private use. After I have discussed the



role which business activity may play in the operation of the organizational entity of capital nature, and having presented actual forms and ways of conducting such activity by the foundations, in chapter 7 which constitutes a summary, one should address the issue of primary and systemic importance, which constitutes the purpose of writing of the said monograph, i.e. whether foundations should be permitted to conduct business activity at all, in particular in Poland, whether they should operate only for ideal objectives, and whether means for the realization of the said objectives should be obtained only from non-commercial sources i.e. only from donations, gifts, public subsidies etc. And if business activity is to be permitted, then to what extent?

Research conducted as part of my work provides an affirmative answer to the question regarding the permissibility of business activity as such, the scope of the activity however is subject to discussion. In chapter 7 I proposed specific solutions *de lege ferenda* both in the case of comprehensive change of the model and introduction of a separate category of commercial foundations, as well as in the case of solutions facilitating the current model without any revolutionary changes. Conclusions of my work are such that if the Polish legislator decided to allow for the business activity to constitute a statutory objective of a foundation, then a separate legal regulation should be created, similar to Denmark's law on commercial foundations. I moreover proposed that for the sake of clarity two separate categories should be created: foundations with ideal objectives and commercial foundations. The former would enjoy various public privileges and the latter only would enjoy the same only to the extent to which they realize public benefit objectives. Conclusions are that taxing revenue from commercial activities coupled with strict distribution prohibition is a more effective way of preventing pathologies of commercial activities of non-governmental organizations than attempts to statutorily restrict the scale of such activities.

However if one was to assume that a separate type of foundation is not created and the model is enforced in Poland where a foundation needs to realize objectives that are socially or economically beneficial, then such model could at least undergo minor remodeling. Firstly, the possibility for the foundations to obtain financing should be expanded – e.g. from 1% tax. Moreover the procedures should be simplified and the technical and capital requirements, which affect the participation in selected public



national or EU programs should be decreased in order to simplify the access to the same. Introduction of an endowment would also be beneficial. All this in order to ensure an uninterrupted realization of objectives of such foundation.

Research conducted as part of my work may be used in the practical aspect of activities of a foundation, when drawing up its statute or in the case where a foundation that previously did not conduct such activity undertakes business activity. In this respect I specified in my monograph how to amend the statute, whether the types of business activity conducted by the foundation need to be specified in detail, what are the requirements for the separation of business activity and statutory activity, in particular if the foundation would like to obtain or keep the status of a public benefit organization, how one should perceive the principle of subsidiarity of business activity *vis-à-vis* statutory activity. Furthermore my work includes a comprehensive list of public privileges for a foundation and well as the issue of tax exemptions. Research presented in my work may be used for the purposes of amendments to the act on foundations, in particular as regards the supervision and regulation (currently there are no regulations) with respect to the liquidation proceedings as well as transformation and merger of foundations and it may also constitute a model for the establishment of a new category of commercial foundations.

## **5. Summary of other academic and research accomplishments**

My other academic and research interests always focused on the civil law. However it turned out later, in particular in the course of my professional career of an attorney, that it is not possible to practice civil law without relying on other areas of law, in particular administrative law. Thus my participation and co-creation of the *commentaries to the act on community's local government with references to the acts on powiat local government and voivodeship local government (CH Beck, 2011, edit prof. R. Hauser, prof. Z. Niewiadomski)*. In this commentary I was responsible for issues related to the civil law aspects. I am the author of chapters concerning the communal property, inter-community associations and agreements and community associations (commentary to art. 43-50, 64-84a and 103 of the act on the community self-government). Combining my interest in the territorial local government and my academic

research on foundations, I also turned to identifying the *relation between the statutory activity to the business activity of the foundations created by the local government units* (article on the above subject matter was published in *Finanse Komunalne [Communal Finances]* – No. 7-8/2016). Local government units, including in particular the communities, may establish foundations, including the foundations which conduct business activity. In the article I discussed the issue of subsidiary nature of such activity in relation to the statutory activity. However it turns out that in practice the expenses for business activity are usually a lot bigger than the statutory activity, which however does not necessarily have to mean that the principle of subsidiarity is breached. This should be overseen by a national supervisory body, including the competent *starosta*, however in Poland it is not efficient due to the fact that the time limit for a *starosta* (similarly to ministers) to receive information required for the proper supervision is unnaturally extended.

The issue of supervision has always constituted a separate area of my academic work. I dealt with supervision over both corporations as well as foundations. As part of my research on the former I published among others: *Ekonomiczna efektywność niezależności nadzoru w spółce akcyjnej [Economic efficiency of independent supervision in a joint-stock company]*, *Studia Prawno - Ekonomiczne*, v. LXXXVIII, Łódź 2013. In connection with my work at the Warsaw School of Economics, in my research I always thought that it was important to examine the application of legal regulations in relation to actual commercial transactions. In my opinion cooperation of lawyers with economists would contribute to the creation of more effective legal regulations. In my later publications concerning the internal supervision over the foundations I was firmly in favor of establishment of such an authority, in particular in the case where the foundation conducts business activity. However, as regards the increase of the number of independent members of the supervisory boards in joint-stock companies, my research confirmed that this is economically ineffective both in the monistic as well as dualistic model. Especially if it were to affect other important objectives of the company – e.g. the professionalism of the “mandatorily” appointed members of the board. There is no need to amend the commercial law – to introduce the independence by *ius cogens* norms. Although the research has shown some positive aspects of introducing

*Jerzy Roman*  
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independent members: they are more likely to introduce changes to the management board, have positive effect on the evaluation of the company in the course of acquisition process, and provide for greater informational transparency of the company. However the introduction of the independence mode, contrary to the intentions, may tip the delicate balance of corporate relations and weaken the initial function of the board which is to represent the shareholders.

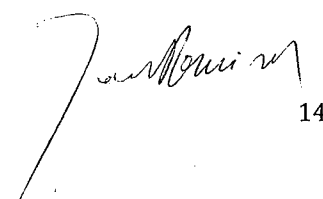
As part of my research on the supervision in a foundation, in connection with research conducted to my habilitation monograph, I wrote articles concerning the supervision over foundations, in particular *supervision of starosta over foundations in Poland - comments concerning legal comparison and de lege ferenda – Finanse Komunalne – 9/2017* and research concerning the efficiency of state supervision over foundations: *Effectiveness of State Supervision and Control of Foundations' Economic Activity, JMFS – Journal of Management and Financial Sciences, 29/2017*. This was an important piece of my research interests which proved that a reasonable i.e. in this case shorter time limit for submission of the annual report on the foundation's activities, should be set. Currently a foundation may submit its annual report by the end of the year following the year for which the report is submitted. This time limit seems to be overly extended. It does not contribute to the effective supervision – information on what is happening with the foundation is received by the supervisory body with one year delay. And there is no reasonable explanation why the time limit is so extended. Moreover there are no sanctions for a failure to submit the report or for submitting it after the expiry of such a long time limit. Even if the report is submitted to particular ministries, there are no uniform standards of supervision in the government administration, including there are no uniform standards of supervision over foundations. In Polish structure of supervision over foundations, a competent minister and *starosta* have been introduced as supervisory bodies with the same scope of competences. At the same time there are no provisions coordinating their activities, which more often leads to inaction rather than overreaction.

My interest in the registration and supervisory issues is also evidenced by my publication concerning prejudicial issue in the proceedings for invalidation of a patent, protection right and right in registration, which was published in English in *Zeszyty*

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Naukowe Uniwersytetu Jagiellońskiego. Prace z prawa własności intelektualnej, *[Scientific Journal of the Jagiellonian University. Works concerning the industrial property law]* z. 2 (120) of 2013 *The preliminary question in invalidation proceedings in respect of a patent, protection right or right in registration, selected issues*. In this article I was dealing with the issue of suspension of proceedings on the basis of art. 97 § 1 subpar. 4 of the Code of Administrative Procedure in invalidation proceedings in respect of a patent, protection right and right in registration. In particular my research focused on the issue of whether in the case where the same authority decides in two equivalent cases for the invalidation of the protection of the intellectual property right between the same parties, pending resolution of one proceeding may constitute the basis for the suspension of the other. The conclusion was that even if a functional interpretation was adopted of art. 97 § 1 subpar. 4 of the Code of Administrative Procedure and “another competent authority for the determination of the initial issue” is understood also as the same authority administering the proceedings in another case for invalidation of a patent, protection right and right in registration, then due to the identification of the subject matter of both proceedings, a resolution of one of them, may not be deemed as the initial issue for the other proceedings.

I pursue my academic interests concerning the rights in registration and patent protection in cooperation with the Institute of Industrial Design which administers jointly with the Warsaw School of Economics one-year postgraduate studies “Design Management. Management of new product development”. The objective of the studies is to develop the competences of the design manager – a profession which is the answer to the increased demand on specialists in the area of competition strategy by effective use of design. At this program of studies I am responsible and I am a lecturer for the industrial property and copyright law in the aspect of implementation and management of development of a new product. As part of this part of my research I wrote articles on *the violation of entrepreneur’s reputation by unauthorized use of its individual trademarks (Państwo i Prawo 7/2013)* as well as *conjunction of norms of the law on industrial property right and the law on combating unfair competition Państwo i Prawo, 9/2013*. In both of these articles, and in particular in the latter I dealt with both accumulation as well as conflict of the protection of both of these laws, emphasizing that



the accumulation of claims for protection may not lead to the situation where the provisions of one of the laws entrench the regulations of the other. For example it shall not be possible to invalidate trademark protection right in a manner other than prescribed by law on industrial property right, even if the patent protection was obtained as a result of actions constituting unfair competition practices. Prohibitions specified in the act on combating unfair competition shall not replace the protection under the provisions regulating absolute rights (patent, trademark, industrial design, etc.). I also pointed to the conflict of norms of both laws, which is evident in particular with respect to the protection of registered and unregistered trademarks.

Another important area of my academic research concerns issues related to family law. This stems also from the choice of my professional career. After many years of work in corporate law firms I opened my own law firm in which I deal exactly with these issues. Practical activity became an inspiration to adopt academic approach to the issues which proved to be important however not sufficiently described and discussed in the family law regulations. This is how I wrote academic articles concerning *the security of mother's and child's alimony and maintenance claims before and after the child is born*, *Przegląd Sądowy* 4/2015; *Jurisdiction in matters of parental responsibility and child support obligations vs jurisdiction in divorce proceedings*, *EPS* 1/2017, pages. 22-28, and *Actual separation as the basis for the court's order to establish separate marital estates*, *Przegląd Sądowy* 11-12/2017.

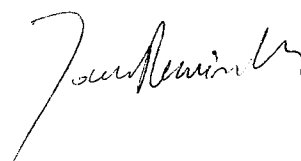
In the last article I turned to the question of whether the principle of the Polish family law in accordance with which the divorce court adjudicates comprehensively on all matters concerning the family, i.e. in addition to the divorce also on the parental authority over minor children, on the contacts and alimony/child support, ceases to apply in the case where the parties or the party with whom the children reside, live outside Poland. In light of provisions of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, matters concerning the spouses may be resolved by the court competent for the habitual place of residence of both spouses or one of the spouses as well as by the citizenship factor. Whereas matters concerning the parental responsibility are usually resolved on the basis of the



habitual place of residence (stay) of the children or the child. Additionally, the jurisdiction of the court on the matters of alimony and child support with respect to minor children, on the basis of regulation no 4/2009 was always with the court which has jurisdiction to the parental responsibility, which was decided by the Court of Justice by expressly excluding the possibility to select for the alimony and child support claims the jurisdiction of the divorce court if the matter concerning the parental responsibility is pending in another court.

In the article concerning the actual separation I examined the issue of actual separation as the basis for the confirmation of separate marital estates as well as the matter of possible divorce or separation, and whether determination of guilt in the breakdown of the marriage should affect decision on financial separation. I presented a critical view of the detailed determination in the proceedings for the separation of marital estates, of the joint marital assets, except for the determination of the obligations of spouses which may constitute a key factor for the evaluation performed by the court of whether the decision on separate estates is not used to the detriment of creditors.

At the same time my academic as well as practical interests have always included “classical” civil issues, such as the “earnest money” (thus publication *Earnest money in commercial agreements – characteristics and key issues: Commercial Agreements, Selected Issues, joint publication edit. Dr J. Gospodarek*, Warsaw 2009 issue i 2010 edition II), lease agreement – in particular the scope of court’s authorization for substitute execution in the lease agreement (glosa do wyroku Sądu Najwyższego z 14.12.2011 r. [*Gloss to the Supreme Court Judgment of 14.12.2011*] (I CSK 122/11), Glosa. Prawo gospodarcze w orzeczeniach i komentarzach no. 3 (156) of 2013) as well as an academic article *Substitute performance in a lease agreement*, *Przegląd Sądowy* 7-8/2013. The legal issue in these publications concerned the relation between the substitute performance granted under the general provisions of the civil code and the detailed regulations concerning the lease agreement. Both in the article as well as in the gloss, I supported the position that notwithstanding the *lex spacialis – lex generalia* relation with respect to these provisions, the specific article 663 of the Civil Code does not repeal the general art. 480 of the Civil Code as there is no conflict between them. Therefore the creditor – tenant in the lease relationship, just as any other creditor has





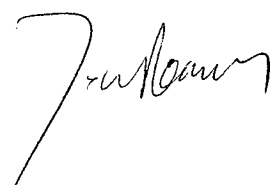
the right to request the court to shape the legal relation and issue a decision on substitute performance. Court's decision will provide clarity to the creditor as to what outlays are necessary as well as will allow for the earlier securing of the means necessary for the substitute performance, and the tenant he will not have to bear the costs for the benefit of someone else's property.

In my latest article *Settlement made before a mediator vs a court settlement*, PPH 6/2018, I primarily pointed to negative consequences of understanding of the phrase "complies with the provisions as to the form" contained in art. 183<sup>15</sup> § 2 of the Code of Civil Procedure, in accordance with which a settlement made before the mediator additionally needs to be made in a special form every time where regulations concerning a given action require the same. In my opinion such interpretation results in diminished importance of mediation as a form of alternative form of dispute resolution. Even after reaching an agreement regarding for example the division of the real property, making the settlement will require further action in order to make it as legally binding as the settlement made in court. Restriction of the role of settlement made as a result of a mediation concerns not only the disputes the subject matter of which constitutes a legal action which requires a special form. Also in the cases for e.g. legitimate portion [*zachowek*], the parties may agree in the settlement that instead of payment of a specific amount of money, the ownership title to the real property shall be transferred – even then they need to visit a notary. For these reasons I am an advocate of the amendment of the regulations (deletion of art. 183<sup>15</sup> § 2 of the Code of Civil Procedure), so that the settlement made before the mediator, after its approval by the court, just as the settlement made in the court, replaced the special form of legal actions.

Finally, a major part of my academic research concerns any and all issues in relation the law on foundations. I have conducted an in depth analysis of many of the issues in my habilitation monograph. However for the sake of clarity of the argument, some of them could not be included in the monograph. In my monograph I wrote not about foundations as such or the third sector as such, but about a relatively specific issue of conducting business activity by foundations. Therefore on some of the issues that were not included in the monograph and are still of interest to me, I have focused during academic conferences as well as independent and post-conference publications:

The role of third sector in economic crisis, *Economics and Law* 2/2016, *Legal aspects of development of foundation's entrepreneurship in Poland in: Opportunities and barriers for the development of entrepreneurship in Poland – public law and private law aspects, academic edit.* Leszek Bielecki, Jan Mojak, Agnieszka Żywicka Lublin 2017; *Identifications of entrepreneurs operating in the third sector. Identification of entrepreneurs in the theory and practice of law, ACTA SCIENTIFICA ACADEMIAE OSTROVIENSIS. SECTIO A NAUKI HUMANISTYCZNE, SPOŁECZNE I TECHNICZNE* No. 8(2)/2016. In this last article I presented, at the example of foundations and societies, the requirements concerning the structure of the business name of entities which either additionally or subsequently (only after some time after they commenced their primary business activity) conduct business activity and legal consequences of subjecting their current name to the laws on business names, including on the protection of the business names. I also pointed to the need to connect the creation and cessation of the right to the business name solely with the actual conducting of business activity and not with registration, therefore the laws on business name regulate not only entrepreneurs entered to the register but also the ones who conduct business activity without the registration. I proposed unification of the provisions concerning business names with respect to associations and foundations. Moreover I subsequently extended thesis included in the article on the role of third sector organizations in economic crises, by writing in my monograph on the areas of business activity in which the foundations are convenient due to e.g. very specific group of end recipients – e.g. with respect to the artistic activities e.g. theaters.

Work on my monograph inspired me to examine more closely *the issue of representation of a foundation in relations with its management board (PPH 2/2017), Legal aspects of relation between statutory and business activity of a foundation, Conducting business activity by non-governmental organizations 1989-2014 in: Changes to business law during system transformation in Poland, SCIENTIFIC WORK OF WROCLAW UNIVERSITY OF ECONOMICS*], Wrocław 2014; *Legal aspects of conducting business activity by foundations*, *Studia Prawnicze*, z. 1/2013. In the article concerning the representation of a foundation in relations with its management board, I present possible problems which may arise in connection with the lack of an internal,



obligatory second governing body with primarily supervisory competences, but also in relation to the representation of the foundation in transactions with the management board. The sole governing body, which in accordance with the provisions of law needs to be appointed in the foundation, is the management board. Additionally, the statute may expressly appoint or provide for the appointment of other governing bodies. There is external state supervision over a foundation – by a competent minister and *starosta*. In view of the above, various possible solutions have been presented for the issue of representation of the foundation in legal relations with its management board. The subject matter of my research in this article also concerned the question whether the external state supervision, and in particular the obligation to submit and publish by the foundation annual reports on its activity and the possibility to repeal by the court of the resolutions of the management board and suspend the management board, constitute *de lege lata* effective instruments introducing the protection of the foundation in the event of conflict of interest between the foundation and the interest of the particular members of the management board. I was interested in this last subject earlier when I received a grant as part of research of young scientists at the Warsaw School of Economics and I conducted a research concerning the efficiency of state supervision over the activities of a foundation. The result of this research is the chapter entitled Effectiveness of State Supervision and Control of Foundations' Economic Activity in the book *"Badania naukowe z zakresu nauk ekonomicznych a praktyka gospodarcza"* [Economic research vs. business practice] edit. M. Wolański. Warsaw 2014 and *Supervision of starosta over foundations in Poland – legal comparison and de lege ferenda comments* – *Finanse Komunalne* - 9/2017.

Other academic accomplishments are being presented in the attachment no 7 to the presented motion.

