



doi: 10.32612/uw.2543618X.2024.pp.145-158

Przegląd Środkowo-Wschodni, 9, 2024

ISSN 2543-618X eISSN 2545-1324

Nr art. 20240907

Data przesłania: 06.06.2024

Data akceptacji: 27.06.2024

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Legal challenges Faced by Hasidic non-profit Organisations in Poland

Wyzwania prawne, z którymi zmierzają się chasydzkie organizacje non-profit w Polsce

Artykuł zwraca uwagę na wyzwania prawne, z którymi mierzą się chasydzkie organizacje non-profit działające w Polsce. Organizacje te zakładane są przez zagraniczne społeczności chasydów celem: 1) odzyskania miejsc kultu utraconych w latach powojennych oraz 2) ułatwienia odbywania pielgrzymek do tych miejsc. Miejsca te, w wyniku drugiej wojny światowej oraz działań władz komunistycznych, znajdują się obecnie w dużej mierze we władaniu Skarbu Państwa, jednostek samorządu terytorialnego bądź też podmiotów prywatnych. Chasydzkie organizacje non-profit muszą jednak zmierzyć się z wyzwaniami legislacyjnymi, aby osiągnąć swoje cele – w szczególności wyzwaniami z zakresu wyboru formy prawnej, ograniczeniami prawnymi w zakresie możliwości władania cmentarzami oraz braku sukcesji prawnej po przedwojennych gminach żydowskich.

Słowa kluczowe: chasydzi, non-profit, gmina żydowska, Polska, procedura regulacyjna

Introduction

In recent years Poland has seen a rise in non-profit organisations incorporated by communities of Hasidic Jews. Their activities are often

overlooked by the public eye, as they do not promote their activities among non-Jews nor do they interfere with the way broad society goes along with its everyday affairs. The goals of these non-profit organisations are also very specific – they are usually limited to caretaking of places of religious and historical significance for the Hasidic community, by striving to acquire ownership of such places (mostly former Jewish cemeteries and synagogues) and offering food and accommodation to pilgrims.

Despite the narrow scope of interest of these organisations they are making a significant impact on both the international Hasidic community as well as Polish society in general. Poland is a popular destination for religious tourism among the Hasidic Jews. The country is visited by tens of thousands of Hasidic Jews annually¹. The main points of interest of these pilgrimages are graves and synagogues of *tzadikim*², which are scattered across Poland – mostly in small towns and villages in the south-eastern part of the country, such as Nowy Sącz, Sokołów Małopolski, Grybów, Gorlice and Bobowa. Many of these places are (due to historical events, as well as through state legislature) currently owned by non-religious entities, such as private persons, businesses, local and state administrative bodies or the State Treasury. Many are also used for non-religious purposes, such as storage facilities (ex. the old Jewish cemetery in Sokołów Małopolski), museums (ex. the synagogue in Lesko) and even bus terminals (ex. the land of the former Jewish cemetery in Przeworsk).

Thanks to the efforts of Hasidic non-profit organisations in Poland, places of religious significance are being brought back to their original functions, allowing for religious tourism to flourish. Furthermore, the growth of religious tourism also promotes the establishment of a variety

¹ <https://turystyka.wp.pl/tysiace-chasydow-w-niewielkim-miescie-w-polsce-pielgrzymki-z-roznych-stron-swiata-7000903328385568a>, [access: 29.05.2024].

² The concept of a *tzaddik* among Hasidim is similar to that of a saint in Christian religions. This title was given to individuals who were particularly outstanding in terms of their faith and who adhered to moral principles in an impeccable manner.

of businesses aimed towards Hasidic pilgrims, such as transportation companies, kosher kitchens, butcheries and hotels.

Although Hasidic non-profit organisations have an interesting set of characteristics, as their actions combine both the spiritual and the secular, Polish law does not create a special legal form for these entities. Because of this, Hasidic non-profit organisations must satisfy themselves with one of the existing legal forms generally offered by corporate law³, the Act on foundations⁴, the Act on associations⁵, the Act related to guarantees of freedom of conscience and religion⁶ or the Act on the relationship of the State to Jewish religious communities in the Republic of Poland⁷. The issue is that none of these legal forms offer a comprehensive solution to the needs of Hasidic non-profit organisations. The organisations are also faced with limitations in the scope of the possibility to reclaim lost real property, as well as challenges related to the possibility of owning cemeteries altogether.

In this article I will present the legal and factual situation that such organisations operate in. First I shall explain how it happened to be that so many places of religious significance are currently owned by secular entities and are used for non-religious purposes. I shall also explain the main objectives and motives driving these non-profit organisations. Finally, I shall present the legal challenges these organisations face when trying to achieve their objectives.

³ Act of September 15, 2000 Commercial Companies Code (Journal of Laws of 2024, item 18, consolidated text, as amended).

⁴ Act of April 6, 1984 on foundations (Journal of Laws of 2023, item 166, consolidated text).

⁵ Act of April 7, 1989 Law on Associations (Journal of Laws of 2020, item 2261, consolidated text).

⁶ Act of May 17 1989 on guarantees of freedom of conscience and religion (Journal of Laws 2023, item 265, consolidated text).

⁷ Act of February 20, 1997 on the relationship of the State to Jewish religious communities in the Republic of Poland (Journal of Laws of 2014, item 1798).

Overview of legal and factual situation

Before the outbreak of World War II, Poland was home to some three million Jews, which constituted around 10% of the country's general population in those years⁸. Poland boasted the highest percentage of Jewish people outside of Palestine, ranking second in the world after the United States⁹. At this time there were a few hundred officially recognised Jewish communities (*gminy żydowskie*) operating across Poland¹⁰. These communities were responsible for a variety of both religious and secular tasks, including organising and maintaining the rabbinate, establishing and maintaining synagogues, houses of prayer, ritual baths and cemeteries, overseeing the religious upbringing of the youth, taking care of providing the Jewish population with kosher meat, managing communal property and foundations established for the benefit of the community¹¹.

The disastrous events of the Second World War drastically changed the landscape of Jewish communities in Poland. During this traumatic time, Polish society, including the Jewish religious communities, came under the influence of brutal legislative changes imposed by the Nazi regime. Although the Jewish communities during this period were, at least formally, kept active for a while, the rights they had were very quickly revoked or their representatives were simply murdered. Of the 3,300,000 Polish Jews who were victims of the Holocaust, only about

⁸ United States Holocaust Memorial Museum, Washington, DC, *JEWISH POPULATION OF EUROPE IN 1933: POPULATION DATA BY COUNTRY*, <https://encyclopedia.ushmm.org/content/en/article/jewish-population-of-europe-in-1933-population-data-by-country>, [access: 30.05.2024].

⁹ P. Borecki, *Uwagi o statusie prawnym wyznawców judaizmu na ziemiach polskich*, Czasopismo Prawno-Historyczne Tom LXII – 2010 – Zeszyt 2, 2010, p. 69.

¹⁰ A. Żbikowski, *Gmina Wyznaniowa*, <https://sztetl.org.pl/pl/sloownik/gmina-wyznaniowa>, [access: 30.05.2024].

¹¹ Art. 4 of the Decree of the Head of State of February 7, 1919 on changes in the organisation of Jewish religious communities, later extended to cover the entire country by the presidential regulations of 1927–1928.

13% managed to survive the cruel events of the war¹². As a result of these losses many Jewish quarters in Polish towns and villages lay desolate and large areas of real estate were abandoned or left without any owners or heirs. Most former Jewish communities simply ceased to exist.

The authorities set up after the occupation of Poland's territories by Soviet troops very quickly began working on legislation to regulate the legal situation of Jewish communities. As early as February 6, 1945, the Ministry of Public Affairs issued Circular No. 3 on the temporary regulation of the religious affairs of the Jewish population¹³. Under the aforementioned act, it was made possible to create so-called Jewish religious associations, which were not to be treated as legal successors of the religious communities regulated by the 1927 presidential regulations¹⁴. Furthermore, these associations were not granted legal personality.

Under the Circular, the boards of Jewish religious associations were to receive from the starosts for use real estate and movable property which was "*previously owned by the former Israelite religious communities and other Israelite associations.*"¹⁵ It is worth noting that the Circular only indicated that Jewish religious associations were to be given the indicated movable and immovable property for *use*. However, the Circular did not regulate the question of *ownership* – i.e. it did not indicate to whom the ownership of the movable and immovable property in question was vested. Indeed, due to the devastation that took place during World War II, most of the movables and real estate in question were abandoned or lost as a result of the annihilation of the relevant Jewish community or previous owners. The question of ownership was not settled until the Decree of March 8, 1946 on Abandoned and

¹² P. Borecki, *Uwagi o statusie prawnym...*, op. cit., p. 81.

¹³ Circular No. 3 of the Minister of Public Administration dated February 6, 1945 (Dep. Wyzn. 911/45) on the temporary regulation of the religious affairs of the Jewish population (Official Gazette of MAP 1945, No. 1, p. 21).

¹⁴ Order of the Supreme Court of October 13, 1960, ref. III CO 27/60.

¹⁵ P. Borecki, *Uwagi o statusie prawnym...*, op. cit., p. 82.

Formerly German Property¹⁶. Based on this Decree, abandoned property, including numerous pieces of real property fulfilling functions related to religious worship, such as synagogues, cemeteries or ritual pools, passed by virtue of the decree to the State Treasury or local government (real estate after 10 years, movables after 5 years)¹⁷.

At this point, it should be noted that on the date the Decree of March 8, 1946 on Abandoned and Formerly German Property came into force, and also during the 10-year period ending with the State Treasury's takeover of the property, the Jewish associations did not have legal personality, nor were they treated as legal successors to the pre-war Jewish communities, and therefore they were not in a position to make claims to prevent the takeover of the property. In this way countless properties constituting places of religious significance were taken over by the State Treasury or local administrative bodies. Astonishingly, Communist authorities, after taking ownership of the properties in question, were very reluctant to describe them in accordance with their original functions. It was not uncommon for former synagogues, *mikvahs* or schools to be referred to as warehouses, libraries, gymnasiums, etc. Also, court rulings under which the State Treasury or local government bodies took ownership over the properties often made no mention of the religious nature of the properties. Post-war documentation often used names such as "brick building" instead of synagogue, arable land, meadows or land for development instead of cemetery, or municipal bath house instead of *mikveh*¹⁸. As a result of these legal provisions countless properties holding historical and religious significance for the Hasidic Jews were taken over by the State (either by the State Treasury or by local government bodies), after which they were often sold to private

¹⁶ Decree of March 8, 1946 on Abandoned and Formerly German Property (Journal of Laws of 1946, No. 13, item 87).

¹⁷ Article 34, Decree of March 8, 1946 on Abandoned and Formerly German Property (Journal of Laws of 1946, No. 13, item 87).

¹⁸ H. Kozłowski, *Restytucja mienia gmin wyznaniowych i organizacji żydowskich*, Warszawa 2014, p. 4.

entities as commercial or residential properties.

Currently, Jewish communities operate under the Act of February 20, 1997 on the relationship of the State to Jewish religious communities¹⁹. The above act also contains provisions regulating a special procedure, which was to constitute an opportunity for Jewish communities to regain ownership of lost properties (the so-called “*regulatory procedure*”). Under the provisions of the act, at the request of a Jewish community or the Union of Communities, proceedings could be initiated within five years from the date of entry into force of the act, to transfer to the applying Jewish community or the Union of Communities the ownership of real estate or parts thereof taken over by the State, and which on September 1, 1939 were owned by Jewish communes or other denominational Jewish legal entities operating in the territory of the Republic of Poland. The act further specified two conditions, which had to be met in order for a claim to be valid²⁰:

- a) as of September 1, 1939 there had to be a Jewish cemetery or synagogue located on the particular property, or
- a) as of the date of entry into force of the act there were buildings on the particular properties which were previously the headquarters of Jewish communes or buildings which previously served the purposes of religious worship, educational and charitable activities.

It is significant to note that the above proceedings, even if successful, did not guarantee that the ownership of the specific property will be transferred to the applicant. Such a possibility only existed if the property in question was at the time owned by the State²¹ and only if the

¹⁹ Act of February 20, 1997 on the relationship of the State to Jewish religious communities in the Republic of Poland (Journal of Laws of 2014, item 1798).

²⁰ Article 30, Act of February 20, 1997 on the relationship of the State to Jewish religious communities in the Republic of Poland (Journal of Laws of 2014, item 1798).

²¹ A significant amount of properties were at the time already owned by private entities (which usually acquired ownership of such from the State in good faith) – it

State agreed to do so at its discretion. Thus, the act did not provide for the possibility of forcing the State to transfer ownership of a property owned by it, nor did it follow from the legislation that the current Jewish communities are legal successors to the pre-war communities (which was also confirmed by the Supreme Court's ruling of November 30, 1971, II CR 525/71, according to which „*there is no legal succession from the former Israelite Religious Communities to the property left behind.*”²²).

Over the five-year period allowing for the filing of applications for regulatory proceedings, Jewish communities filed 5544 applications²³. However, the above impressive number of applications represents only a fraction of the lost property. As of December 31, 2019, the statistics for regulatory proceedings were as follows²⁴:

- a) 2854 proceedings were fully or partially completed, including:
 - 669 – completed by settlement,
 - 539 – completed with a ruling (fully or partially) granting the application,
 - 1018 – completed with a ruling on discontinuance of regulatory proceedings,
 - 553 – completed with a ruling to dismiss/reject the application
 - 107 – ruling not agreed upon
- 71 regulatory proceedings were suspended,
- 2650 cases remained to be processed.

Based on the above statistics it is easy to realise that a significant number of religious properties remain in the hands of secular entities,

was therefore impossible to forcefully transfer ownership of such properties from the current private owner to the applicant.

²² Judgment of the Supreme Court of November 30, 1971, ref. II CR 525/71.

²³ D. Walencik, *Revindication of religious organizations' properties in Poland: Thirty years' experience of building a democratic state ruled by law*, Studia z prawa wyznaniowego 2022, Vol. 25, p. 17.

²⁴ Ibidem.

be it public or private. The 5-year deadline for filing applications to commence regulatory proceedings lapsed over 20 years ago, therefore there are currently no official proceedings allowing Jewish communities to try and acquire ownership of lost properties through an official ruling or decision. State-recognised Jewish communities, operating on the basis of the Act of February 20, 1997 on the relationship of the State to Jewish religious communities, are unable to effectively strive for the acquisition of lost properties on commercial terms because of limited financial resources and manpower. This is why Hasidic Jews, through community-driven non-profit organisations, have decided to take matters into their own hands, by focusing their efforts on the reacquisition of religious properties, which official Jewish communities were unable to acquire on the basis of the above described regulatory proceedings.

Legal challenges

Hasidic non-profit organisations face a number of legal obstacles when striving to achieve their goals. First, Polish law does not provide a dedicated legal form for such entities, therefore most Hasidic non-profit organisations operate in the form of foundations (*fundacje*) or limited liability companies (*spółki z ograniczoną odpowiedzialnością*). Although both of these legal forms offer a variety of their own benefits (in particular considerable tax exemptions offered to foundations²⁵), they have one serious flaw – they are not allowed to own cemeteries.

Ownership of cemeteries is regulated by the Act of January 31, 1959 on cemeteries and burial of the dead²⁶. The act distinguishes between the concept of a cemetery and cemetery land. A cemetery is a property on

²⁵ In particular Article 16 of the Act of April 6, 1984 on Foundations (Journal of Laws of 2023, item 166, consolidated text) and Article 17 section 1 point 4) of the Act of February 15, 1992 on Corporate Income Tax (Journal of Laws of 2023, item 2805, consolidated text, as amended).

²⁶ Act of January 31, 1959 on cemeteries and burying the dead (Journal of Laws 2024, item 576, consolidated text).

which the burial of remains is conducted. Cemetery land is a property on which a cemetery was once located, which was subsequently closed down²⁷. According to the act, the “*maintenance and management of religious cemeteries belongs to religious associations*”²⁸. There are, however, no limitations on the ownership, maintenance or management of cemetery land.

The interpretation of the quoted Art. 2 sec. 2 of the Act of January 31, 1959 on cemeteries and burial of the dead is subject to debate. On the one hand, the provision doesn't specify that *ownership* of religious cemeteries belongs to religious associations – the provision only mentions the *maintenance and management* of such. Similarly, according to the provisions of the Act of May 17, 1989 on guarantees of freedom of conscience and religion²⁹, “*churches and other religious associations have the right to possess, manage and establish and expand burial cemeteries*”. It should be noted that the above act also does not specify that churches and religious associations are the only ones allowed to *own* cemeteries (as Polish law distinguishes between *ownership* and *possession*). It could therefore be argued that anyone can own a cemetery, however all actions related to conducting burials and ceremonies, exhumations etc. must be conducted by a religious association. Despite the above argumentation, in practice the State is reluctant to transfer the ownership of cemeteries to entities which are not religious associations – mostly in fear of damaging its public image by being accused of transferring the ownership of a religious property to a “non-religious” entity. The usual argument from the side of the State authorities is that the law only allows them to transfer the ownership of cemeteries to religious associations or Jewish religious communities.

²⁷ Article 6 of the Act of January 31, 1959 on cemeteries and burying the dead (Journal of Laws 2024, item 576, consolidated text).

²⁸ Article 2 section 2 of the Act of January 31, 1959 on cemeteries and burying the dead (Journal of Laws 2024, item 576, consolidated text).

²⁹ Act of May 17, 1989 on guarantees of freedom of conscience and religion (Journal of Laws 2023, item 265, consolidated text).

One may therefore wonder – why don't Hasidic non-profit organisations simply operate in the form of religious associations operating under the Act of May 17, 1989 on guarantees of freedom of conscience and religion, or Jewish religious communities operating under the Act of February 20, 1997 on the relationship between the State and Jewish religious communities in the Republic of Poland? The answer is strictly practical:

- a) the right to establish a religious association is granted to at least 100 *Polish citizens* with full legal capacity³⁰,
- b) the right to establish a Jewish religious community is, on the basis of internal regulations accepted by the Union of Jewish Communities, granted to the Council of the Union of Communities under the condition that a group of 30 persons of legal age lives in the district in which the new community is to be established³¹.

Since Hasidic non-profit organisations are usually established and managed by non-Polish citizens (mostly from the USA, UK and Belgium) who permanently reside outside of Poland, the above conditions to establish a religious association or Jewish religious community are very difficult to meet. Furthermore, the incorporation of a new Jewish religious community is dependent on the consent of the Council of the Union of Communities – therefore if the Council does not agree to such an incorporation (at its own discretion) then such an incorporation is simply not possible.

The goals of specific non-profit organisations are also very specific and have more similarities with non-profit SPV companies than with proper religious entities. This is because the organisations strive to acquire, renovate, conserve and maintain specific properties of religious

³⁰ Article 31 sections 1 and 2 of the Act of May 17, 1989 on guarantees of freedom of conscience and religion (Journal of Laws 2023, item 265, consolidated text).

³¹ Article 15.1. of the Internal Law of the Jewish Religious Community in the Republic of Poland, January 2006.

and historical significance, usually found within one town or district. Their actions are usually limited to:

- a) purchasing real property in order to create a *pilgrim's house* for Jews visiting nearby places of religious significance,
- b) acquiring ownership of cemeteries and/or burial places, synagogues and other properties of religious significance in order to renovate them and make it convenient for pilgrims to visit them.

Hasidic non-profit organisations do not, however, strive to conduct burials, perform marriages, run schools or perform other actions usually associated with broadly defined religious organisations. This is why, in practice, Hasidic non-profit organisations are not established as religious associations or Jewish religious communities and instead choose to operate in one of the remaining legal forms generally offered by Polish law to non-profit organisations.

Another legal challenge is the lack of legal successorship in relation to pre-war Jewish communities. Although Hasidic non-profit organisations are often established by heirs of rabbis and *tzaddikim* who used to be the leaders of communities owning particular religious properties, they do not currently have any legal claims they can pursue through court or administrative proceedings aimed at reinstating their ownership over said properties. These organisations also lack any sort of privileges in relation to these properties, therefore they are treated (both by the State and by private entities owning the properties) in a similar way to any other non-profit entity. Because of all the above, negotiations aimed at reacquiring ownership of specific properties must be conducted at a commercial level, i.e.:

- a) the current owner must be willing to transfer ownership – there is no legal basis to request that this is done forcefully through a court ruling or governmental decision,
- b) the transfer of title must be done on the basis of conditions, to which both of the parties agree (i.e. on the basis of a commercial

contract concluded between the current owner and the interested Hasidic organisation). Unfortunately, in practice, many entities try to take advantage of the fact that their property holds significant religious or sentimental value to a particular Hasidic organisation by trying to sell their property at a price that is much higher than the property's market value. The Hasidic organisations, having no other options, are often forced to overpay for the purchase of particular properties.

Conclusion

Despite the above legal challenges the number Hasidic non-profit organisations operating in Poland is increasing year-by-year. Having this in mind one may wonder what the optimal legal set-up for Hasidic non-profit organisations may be. There is currently no "standard" approach these organisations take – in particular when it comes to the legal form in which these organisations operate, their corporate structure, goals and objectives defined in their by-laws etc. There is also currently no legislation in the works aimed at creating provisions which may support the actions of Hasidic non-profit organisations, therefore they must make do with what the law offers for the time being.

Having this in mind I believe it would be interesting to conduct comprehensive research on existing legislature and existing Hasidic non-profit organisations (both in Poland and abroad) in order to establish a legal set-up which will optimise their structure and maximise their chances of success.

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