

Abstract – Doctoral Thesis

The Foundation *Mortis Causa* in Case of Legal Disputes under the Law of Succession

Caroline Krezer

The foundation has been experiencing a renaissance for many years in Germany. In 2017 alone, 549 new foundations were established, while in 2018 there were only 554. Currently, there are approximately 22,700 foundations in Germany. The founder can set up his foundation *inter vivos* (Stiftungsgeschäft unter Lebenden, §§ 80, 81 BGB) or *mortis causa* (Stiftungsgeschäft von Todes wegen, § 83 BGB). This dissertation examines the foundation *mortis causa* in cases of legal disputes under the law of succession.

In the case of foundations *mortis causa*, the founders – in contrast to the foundation *inter vivos* – cannot influence whether the foundation is actually set up according to their wishes. They also cannot protect the foundation from third parties during the establishment phase. After the death of the founder and the opening of his will, the competent state authorities decide whether the legal minimum requirements under §§ 80, 81 BGB are met. At the same time, heirs or "prospective heirs" may assert claims based on the last will or on the right to an inheritance and a compulsory portion, which may deprive the foundation of its asset base, and third parties may also attempt to challenge the recognition of the foundation as such in court. The following study deals with the conceivable problems during the recognition procedure and their solutions.

The dissertation is divided into four parts: The first part is focused on the question who becomes the legal entity of the estate in the phase between the death of the testator and the recognition of the foundation and what powers of disposition are granted to this legal entity. The starting point for the investigation is § 1923 BGB and § 84 BGB.

The second part of the dissertation deals with the rights and duties of the competent state authorities during the recognition phase, taking into account the special situation of a foundation *mortis causa*. Here the scope of the audit as well as the formal and material requirements for the establishment of such a foundation are compiled. Subsequently, the foundation authorities' rights to eliminate any shortcomings in the act of formation are examined. It focuses on the question which instruments may be used and which limits the

foundation authority must obey while interpreting an incomplete last will and supplementing an insufficient formation. The preceding results are then summarized in a recommendation for action, which contains a decision matrix for verifying the recognition of a foundation *mortis causa*.

The third part of the dissertation emphasizes how inheritance conflicts are dealt with in court and examines the competencies of the individual courts and authorities. It analyses which safeguards are available to the foundation authorities in the event of disputes as to the validity of the last will, how any potential legal issues may be addressed, and in which cases administrative and civil courts are responsible for legal disputes. Finally, the various consequences resulting from the choice of the respective legal forums are examined to determine how best to proceed.

The final chapter of the dissertation deals with a unique situation concerning the establishment of a foundation *mortis causa* and examines which steps are to be taken if, after recognition of the foundation, a further, more up-to-date last will is found. In order for this situation to arise, the last will must have different specifications with regard to the establishment of the foundation and the determination of heirs or the appointment of heirs. If the foundation established within the framework of a previously found last will has already been recognized, this raises several difficult legal questions. The effects of the subsequent will are examined on the basis of various case groups and with an emphasize on the legal relationships between the already recognized foundation, possibly other heirs, a possibly newly recognized foundation and possible donors.