

POLAND

The National Council of Legal Advisers

During the past year our Bar was working on several proposals concerning legal professions in Poland, particularly on new rules on entry to the profession, merger of legal professions in Poland as well as on defending the independence of Bars with reference to the application of the Commissioner for Civil Rights to the Constitutional Tribunal.

Draft Act on State Law Examinations - update

On September 2009 The National Council of Legal Advisers passed a resolution, in which called the Minister of Justice to abolish the entry exam to the legal apprenticeship and allow all graduated students of Faculty of Law to be admitted to training for qualified lawyers.

After our resolution the Minister of Justice suspended the final work on the draft Act on State Law Examination and asked for a new discussion. At this stage the draft law is a subject of consultation in the Government.

Preparations for the merger of the legal professions - update

In 2008, the Minister of Justice initiated work aiming at unifying the professions of legal adviser and advocate and thus creating one legal profession.

The latest Minister Krzysztof Kwiatkowski (appointed in October 2009) has not presented any opinion yet on merger of legal professions.

The National Council of Legal Advisers has decided to call for an extraordinary General Assembly of Legal Advisers, which will take place on 26 and 27 February 2010. The Assembly will formulate a position of our Bar on the foreseen law on merger of the legal professions in Poland.

Pro bono work and problems with its taxation.

The National Council of Legal Advisers has initiated a wide spread action called “the Blue Umbrella” – a week of free legal advices for consumers in 33 cities in Poland. The action has met with a huge interest from citizens. Our Bar has decided to continue and to expand the action – many regional chambers of legal advisers established a special “lawyer’s day” once a week, when people can come and receive free legal aid. Others created a co-operation with local NGOs and social centres to provide pro bono legal aid. Success of such activities shows how important is constructing a permanent system of legal aid for the poorest people.

In January 2009 the Minister of Justice has published the draft presumptions on act on legal aid in Poland. Main points are as follow:

- At the beginning legal aid will be provided by 16 centers for family and social aid as a pilot project. Finally Ministry of Justice plans to establish such legal aid points in each 379 centers for family aid and social aid centers.
- Everyone, regardless of his income, will be able to obtain information on his rights and duties, procedures, right to appeal from the decision or judgment etc.
- The poorest people can also receive legal advice at pre-litigation stage as well as representation before courts and public institutions financed by state, there is no information on which fields of law such legal aid will be provided.

This draft act was discussed in May 2009 by the Government and was decided to return it to the Ministry of Justice to prepare a new version of it. Works on the draft are still ongoing.

The National Council of Legal Advisers welcomes presumptions on legal aid however needs more details to take an attitude towards it. Our Bar underlines, that not only the system of legal aid is needed, but also clear and friendly interpretation of a tax law connected with the pro bono work.

Ministry of Finance and financial authorities are in favor of interpretation that lawyer must pay VAT from the value of the remuneration for legal assistance, which is given without any charges to the client and the client should pay personal income tax from the value of such remuneration. Article 8.2 of the Polish act on the goods and services tax (VAT) is not clear in aspect of taxation of pro bono work. There are some judgments of administrative courts which call the Ministry to change its interpretation, however no decision has been taken till now.

The application of the Ombudsman to the Constitutional Tribunal concerning mandatory membership of professional self-governments – update.

In January 2009, the Ombudsman submitted provisions of 20 acts, including the Act on Legal Advisers, to Constitutional Tribunal's review. In the application, he questioned mandatory membership of professional self-governments, including Bars.

The National Council of Legal Advisers on 14 September 2009 passed a resolution on this matter. The resolution states that application of the Ombudsman to the Constitutional Tribunal concerning mandatory membership of professional self-governments is contrary to the principles of subsidiarity, power sharing and decentralization of the public administration. It is also incompatible with the article 17 of the Constitution of the Republic of Poland which states in the point 1 that *“By means of a statute, self-governments may be created within a profession in which the public repose confidence, and such self-governments shall concern themselves with the proper practice of such professions in accordance with, and for the purpose of protecting, the public interest.”*