

"The requirements of the access to legal profession in Poland"

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Dear Colleagues,

Let me first describe a situation on the Polish legal services market. It is worth noting that the regulation of legal services in Poland has been under constant transformation for the recent decade. There two legal professions: advocates and legal advisers, the position of which is clearly stated in the legislation. On the other hand, we observe entrepreneurs able to provide broadly understood 'legal services' without any supervision and transparent rules. Throughout recent 15 years a tendency has grown that providing legal services is a general business activity and professional lawyers have to compete with other entrepreneurs on the free market.

Despite these transformations, professionals are still able to stand out in the crowd. For what reason? Nowadays position of advocates and legal advisers in Poland is similar. Legal advisers may exercise their profession on the basis of the labor contract by contrast to advocates who cannot work as employees. Until recently legal advisers have not been entitled to act as defenders in criminal cases. In last few weeks the Parliament passed on a law, which will eliminate this limitation. As a result both professions will have equal prerogatives with the exception that a legal adviser who will employed on the basis of the labor contract (for example as in-house lawyer in a company) still will not be entitled to act as defender in criminal cases. Through this exception the legislator intends to protect the rule of independence.

Advocates and legal advisers are subject to tight rules of deontology based on the core values of the profession: independence, absence of conflict of interest and professional secrecy. They are also covered by the compulsory professional liability insurance, which may be increased when needed. These safeguards serve to protect the clients' interest.

But the question we need to answer is which requirements on access to the profession of lawyers protect the rule of law and interests of our clients? The Polish answer is that it is a must to complete the professional training before being admitted to the bar examination. I would like to underline that both – the professional training and the professional exam shall be considered as a tool to ensure the high quality, skills and knowledge of future lawyers and not as a way of limitation the number of lawyers in our country. Due to the statistical data provided by the Ministry of Justice candidates who completed the professional training achieved better results during the bar examinations than others who were exempted from the obligation of participation the training. And as I will show in the last part of my speech – a number of such exemptions are broad and is still rising. Therefore the position of our Bar is that the professional training finished with the bar examination shall be the main path to the profession and shall not be weakened by creating many other possibilities of obtaining professional qualifications.

Over the past ten years, professional examinations for lawyers in Poland underwent considerable changes.

Firstly, the changes affected the bodies in charge of the examination organization. Until 2005, these were competent bodies of the Polish Bar Council and the National Council of Legal Advisers. Since 2006, the bar exam and legal adviser's exam are both state exams held by the examination board appointed by the Minister of Justice.

Secondly, the form of the two examinations has changed. In 2005, the oral part was given up, while the written part was designed to include a test and problems to be solved in the specific areas of law. Pursuant to the provisions of the act on deregulation of certain professions, the test shall be abolished in 2014, while the written part shall comprise only the problem tasks.

Thirdly, the rules of examination of future advocates and legal advisers have been harmonized. Currently, the professional examinations for both professions share the same form and content.

Similarly, the rules of access to advocates' and legal advisers' training have been modified and harmonized.

The legal advisers' training can be accessed by the candidates who pass a competitive examination, the procedures and rules of which are set out in the act on legal advisers. The scope of the examination is the same as for advocates (Article 33¹ paragraph 3 of the act on legal advisers and Article 75a of the Law on the Bar).

The competitive examination to access the lawyers' training has a written form (a test consisting of 150 questions). A trainee candidate scores a positive result in the competitive examination after providing 100 correct answers.

The competitive examination is held once a year by the examination commissions for legal advisers' training at the Ministry of Justice, appointed within the jurisdiction of one or several regional chambers of legal advisers. The examinations are held simultaneously throughout Poland and can be taken upon payment of a fee equal to 50% of the minimum wage. The commission pursuant to the resolution, against which one can appeal to Minister of Justice regarding the examination results, determines the examination results.

The current procedure of lawyers' examination is as follow (as the exam for future legal advisers is the same as for advocates I am describing the first one only):

The legal adviser's examination consists of five written parts:

- The first part of the examination includes solving of a problem in the field of criminal law, involving the preparation of an indictment or appeal, or where no grounds for the same can be found, preparation of a legal opinion based on the case files or the alleged facts prepared for the examination purposes.
- The second part of the examination includes solving of a problem in the field of civil and family law, involving the preparation of a lawsuit, application or appeal, or a legal opinion.
- The third part of the examination includes solving of a problem in the field of commercial law, involving the preparation of a contract or a lawsuit, or application or appeal, or a legal opinion.
- The fourth part of the examination includes solving of a problem in the field of administrative law, involving the preparation of an appeal to the administrative court of the first instance or a final appeal to the Supreme Administrative Court, or a legal opinion.
- The fifth part of the examination includes solving of a problem in the field of professional practice and ethical rules, involving preparation of a legal opinion.

During the examination, an examinee may refer to legal acts, commentaries and case law.

Who is preparing questions and problems to be solved during the examination?

Prior to each examination, the Minister of Justice appoints, by way of an order, a team to prepare for the examination tasks. The team is composed of:

- four legal advisers delegated by the National Council of Legal Advisers

- four representatives of the Minister of Justice

The works of the team are coordinated by the chair, or in his/her absence, by the deputy, both appointed by the Minister of Justice from among the persons representing the Minister of Justice.

The examination commissions of the first instance is appointed by the Minister of Justice and each of them consist of:

- four representatives of the Minister of Justice and their deputies,
- four representatives of the National Council of Legal Advisers and their deputies.

The Minister of Justice appoints chair of each commission.

An examinee may appeal against the examination results to the second-degree examination commission at the Ministry of Justice within 14 days of receiving the *resolution on the legal adviser's examination results*

The candidates for members of the appeals commission are appointed by:

- 1) The Minister of Justice – 5 members, one of whom the chairman is appointed,
- 2) The National Council of Legal Advisers – 4 members.

The resolutions are adopted by a majority of two thirds of votes in the presence of at least half of the members of the Appeals Commission.

You can appeal against the resolution of the Appeals Commission to the administrative court.

The proceedings before the Appeals Board are governed by the provisions of the Code of Administrative Procedure.

There is no need to complete the training or to pass the bar examination for the following persons:

- Professors and Doctors of Laws (which means post-doctoral or “assistant professor”);
- persons for a period of at least three years occupied the position of counsel or senior counsel at the Office of Attorney General of the Treasury or practised the profession of a bailiff;
- persons who occupied the position of a judge, prosecutor or practised the profession of an advocate or a Notary Public;
- persons who passed a judge or prosecutor examination after 1 January 1991 or a notary public examination after 22 April 1991 and during a five year's period prior to the application for entry in the list of legal advisers, for a joint period of at least three years:
 - a) occupied the position of assistant judge, assistant prosecutor, court clerk, senior court clerk, court trainee, prosecutor trainee, prosecutor assistant, judge assistant or

were employed at the Supreme Court, the Constitutional Tribunal or at an international judicial body, in particular at the Court of Justice of the European Union or the European Court of Human Rights and performed the tasks corresponding to the duties of a judge assistant or

b) performed – under an employment contract or a civil law contract – tasks requiring legal knowledge and directly related to the provision of legal assistance by an advocate or a legal adviser at a law office, law firm, civil partnership, registered partnership, partnership, limited partnership or limited joint-stock partnership or

c) were employed at the offices of public authorities or at state organizational units and performed tasks requiring legal knowledge, directly related to preparation of draft acts, regulations or local laws;

- persons who hold an academic degree of Doctor of Laws and during a five year's period prior to the application for entry in the list of legal advisers, for a joint period of at least three years:

a) occupied the position of court clerk, senior court clerk, court trainee, prosecutor trainee, judge assistant, prosecutor assistant, or

b) performed tasks requiring legal knowledge and directly related to the provision of legal assistance by a lawyer – under an employment contract or a civil law contract – or

c) were employed at the offices of public authorities or at state organizational units and performed tasks requiring legal knowledge, directly related to preparation of draft acts, regulations or local laws.

There is an obligation to pass the bar examination however without the requirement to complete the professional training for the following persons:

- Doctors of Laws;

- persons who, for at least four years during a period of not more than six years prior to the application for admission to the examination, occupied the position of court clerk, senior court clerk, prosecutor assistant, judge assistant, or were employed at the Supreme Court, the Constitutional Court or at an international judicial body, in particular at the Court of Justice of the European Union or the European Court of Human Rights and performed the tasks corresponding to the duties of a judge assistant;

- persons who, for at least four years during a period of not more than six years prior to the application for admission to the examination, performed – under an employment contract or a civil law contract – tasks requiring legal knowledge and directly related to the provision of legal assistance by a lawyer at a law office,
- persons who, for at least four years during a period of not more than six years prior to the application for admission to the examination, were employed at the offices of public authorities and performed tasks requiring legal knowledge, directly related to the provision of legal assistance to such offices;
- persons who, for at least four years during a period of not more than six years prior to the application for admission to the examination, were employed at the offices of public authorities or at state organizational units and performed tasks requiring legal knowledge, directly related to preparation of draft acts, regulations or local laws.
- persons who passed a judge, prosecutor, notary public or bailiff examination;
- persons who occupy the position of counsel or senior counsel at the Office of Attorney General of the Treasury.

As you may see the alternative paths to the profession of lawyers in Poland are quite broad.