



# **THE NATIONAL COUNCIL OF LEGAL ADVISERS**

**THE CONFERENCE OF THE PRESIDENTS OF THE EUROPEAN BARS**

## **COUNTRY REPORT**

**VIENNA, FEBRUARY 2015**

## **Deregulation**

According to the information supplied for last year's conference, on 23 August 2013 a new law came into force in Poland amending the laws on the exercise of certain professions, including the legal profession. By shortening the duration of a compulsory legal practice of trainee lawyers, who are not required to complete neither the qualification course nor an exam, the new law has liberalised the general rules governing the admittance to the register of legal advisers. In addition, the duration of a compulsory legal practice has been shortened from five to four years for those trainee lawyers who are allowed to take the exam without the necessity to complete the qualification course.

Another important change was the simplification of the exam formula by eliminating its test component, while retaining the problematic parts consisting of five written tasks on different areas of law. It should be noted here that the oral component of the exam has been absent in the formula for almost 10 years.

The National Council of Legal Advisers has repeatedly stressed that the compulsory legal qualification course should be the primary means of acquiring professional qualifications and in this sense it should not be undermined by creating alternative routes of access to the profession.

On 15 April 2014, the Council of Ministers submitted to the Parliament the draft of a third deregulation bill. The third round of a deregulation process comprises of 101 professions, including, as has been the case with the previous projects, vocations related to the functioning of the judiciary. The most important change in the project is the authorisation for advocates and legal advisers to represent parties in cases before the Patent Office, which relate to the filing of applications and maintaining the trademark protection. At present, only patent agents can represent parties in such cases. During the first reading of the bill on 7 December 2014 the Members of Parliament decided to send the project for consultations of the Special Committee on Reducing Bureaucracy.

## **Equalisation of competencies between advocates and legal advisers**

A fundamental change when it comes to the competencies of legal advisers in Poland will occur in July later this year. It is because on 1 July 2015 a radical reform of the criminal procedure, which also relates to the profession of a legal adviser, comes into force. Under the new rules, legal advisers will acquire the competency to act as a defence counsel for the accused on the same basis as is now the practice for advocates. This change will however not concern those legal advisers who work on the basis of a contract of employment.

The above change in the criminal procedure has prompted an amendment in regulations concerning the filing of certain case pleadings, which is for the appeal and cassation. Therefore, if an appeal against the judgment of the district court does not originate with the prosecutor, it should be drafted and signed by an advocate or a legal adviser. In case of cassation, if it does not originate with the prosecutor or the above-mentioned legal professionals, it should be drafted and signed by the defence counsel or a legal representative.

## **Problems with taxing the pro bono work**

Any fundamental changes by way of exempting the provision of free legal advice from the VAT are still impossible. This is mainly because of the position of the Ministry of Finance, which has consistently held that the rules of the EU do not allow Poland to unilaterally exempt free legal aid from the VAT, whereas abolishing the tax on such services would adversely affect public budget.

Hopes for some change came alive again when in the first half of 2014 the government adopted a project within the fourth series of a deregulation package, presented by the Minister of Economy, which among other things aims to increase the availability of free legal services.

Under the new arrangements, which entered into force on 1 January 2015, free legal advice rendered to a person who receives social or child benefits is exempted from tax, regardless of the value of the benefit in question. A person who wishes to take advantage of this provision is required to obtain a statement evidencing that such benefits have been granted. However, the criterion used to confer such an exemption is effectively very low - only those most destitute can apply. Any clear and systemic regulations providing for a broad access to free legal aid are still missing.

The introduction of the exemption does not affect person's ability to take advantage of another exemption referred to in Section 21(1)(68)(a) of the PIT Act. According to this provision, lawyers providing legal aid service in connection with its marketing or advertising are exempted from tax obligations.

## Legal aid financed from public funds

Poland is one of the few countries where legal aid *ex officio* exists only at the stage of the court proceedings. It should be emphasised that the National Council of Legal Advisers has repeatedly called on politicians to create such a system, primarily because of the actual social needs, but also because of various international obligations of Poland. For many years the National Council of Legal Advisers has been undertaking a number of initiatives to ensure that the poor members of the society have access to legal assistance. We are aware that these actions can merely complement the state policy in this area and they can never replace it.

On 12 December 2014, a draft law on free legal aid and legal information was put forward for intergovernmental and public consultations. The draft foresees the establishment of at least 1,549 centres, where free legal aid could be provided, and further 42 posts for the purpose of providing legal information via hotline.

Legal aid will consist of:

- a) informing an authorised person of the applicable law as well as his/her rights and obligations;
- b) indicating to an authorised person a method how to resolve the legal problem in question;
- c) assisting in preparing drafts which require certain amount of legal knowledge and to the extent necessary to provide given assistance, with the exception of pleadings in pre-court or court proceedings as well as drafts in administrative cases;
- d) drafting a pleading to request an exemption from court costs or an appointment of *ex-officio* representative.

Legal aid will however not cover cases from the field of tax law, customs, foreign exchange, trade and economic activity, with the exception of its commencement.

According to the proposed amendments, free legal assistance will be given to individuals who, *inter alia*, in the period of one year prior to the request for legal aid, were granted social assistance. The right to obtain free legal aid will not be conferred solely due to the existence of social assistance. Free legal advice will be also available to those individuals who are currently in difficult situation experiencing, among other things, unemployment, disability, domestic violence or serious illness.

Currently, the project is the subject of an intense debate.